Addis Ababa University

College of Law and Governance Studies

School of Law

Constitutional and Public Law

Thesis Title:-

"Individuals' Constitutional Complaints under the Ethiopian Constitutional Litigation System: the Law and the Practice."

By:

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Submitted in Fulfillment for the Requirements of Degree of Masters in Constitutional and Public Law

February, 2018
Advisor: Dr Getachew Assefa (PhD & Assoc. Prof.)

DECLARATION

I declare that, ***"Individual Constitutional Complaints under the Ethiopian Constitutional Litigation System: the Law and the Practice."*** is my work and has not been submitted for any degree or examination in any academic institution. All sources and materials used are duly acknowledged and are properly referenced.

ABRAHAM AMARE ASSEFAW (ID No. GSR/3624/07)

February, 2018 Signature _____

This Thesis:

"Individual's Constitutional Complaints under the Ethiopian Constitutional Litigation System: the Law and the Practice,"

is approved by Board of Examiners

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EXAMINERS:-

Dr. _____ Date_____ Signature _____

Dr._____ Date_____ Signature _____

CHAIR OF THE CENTER:

Dr. _____ Date_____ Signature _____

ASTRACT

*This **thesis** is aimed to focus on comparative perspective of Individuals' Constitutional Complaints in general view of different countries of the world and their different legal mechanisms, as well as it is, particularly, intended to point-up on Ethiopian current Individuals' Constitutional direct access to complaints and the procedural system. Most of the time the countries' experiences evidenced that their differences lied on their legal system which means, obviously, the common law legal system or the continental or civil law legal tradition. Their differences also are positioned in their political and constitutional culture of both sides. But, surprisingly, in some countries' practices it could find out that merged or fused or modified kind of constitutional litigation system. There are also other kinds of models out of these two above mentioned that their Constitutional Adjudication systems are organized, for example, in their Constitutional Council, Second Chamber or the National Council, Parliament or specialized parliamentary bodies, etc.*

The author of this thesis really impressed to the Individual Constitutional Complaints (ICC) either experiences of the constitutional court or the amparo proceeding of judicial review of constitutional rights. The third alternative, the focal point of this writing is, to which its constitutional jurisdiction is existed under the parliament or the Upper House or the House of Federation (HoF) or some say it the Second Chamber. The FDRE constitution furnished a power to the House of Federation to interpret the constitution. It stated that the House has the power to interpret the Constitution.[1] Thus, the Ethiopian new constitutional system emerging a new-fangled experience that is neither a constitutional court's nor a supreme court's judicial review jurisdiction of constitutional interpretational mechanism.

*As it is attempted to highlight above, the purpose of this research paper doesn't mean to show the constitutional adjudication system merely, instead this **Research Paper** deliberately to focus on and to shin out the Individuals' Constitutional Complaints system of the Ethiopian contemporary legal and practical experiences. Indeed, the constitutional adjudication or constitutional review arrangement of one country is strictly interrelated with the subject matter of this thesis. For the rationale of the Individuals' Constitutional Complaints system of the Ethiopian contemporary legal and practical experiences, this thesis is organized into four main chapters. Chapter one deals with the introduction, chapter two focuses on comparative aspects of other countries experience of ICC, chapter three discusses the Ethiopian current legal and practical arrangements with regard to ICC and chapter four encompasses with conclusion and recommendations.*

[1] Proclamation No. 1/1995, entered into force as of the 21st day of August, 1995. Cited as the 1995 Constitution of the Federal Democratic Republic of Ethiopia ("FDRE"), Article 62 (1)

ACKOWLEGMENT

I would like to provide my appreciation to all those who assisted me in writing this thesis. The preparation of this paper would not have been possible without the help of a number of individuals. First and foremost, I want to provide my gratitude to God for his bless and bring me on this step out of dust. "Thanks God".

My deepest gratitude and appreciation also goes to my family my father Amare A., my mother Asefach K., my uncle Yohannes K, my sisters, Elsa A., Senait A., Selome A. with MIMIYE, and Rutha A. with Teame(NUNUYE & LULU), Haria D. with G/mariam, my brothers Esaak A. & his wife Zufan, Yakob A., Samual A. Rigaat, Misgina K. with MIKI & SARON, Goituom K., Belainesh K., and G/medhin A.

The most contribution comes from my supervisor, Dr. GETACHEW ASEFA (PhD & Assoc. Prof) who tirelessly read the drafts and provided me insightful, technical and constructive, comments and suggestions that helped me to grasp my arguments energetically.

I also extend my gratitude particularly to Dr. Assefa Fiseha (PhD & Assoc. Prof), Dr. Getahun Kassa (PhD), Muradu Abdu (PhD), Dr. Yonas Birmeta (PhD), Dr. Solomon Negusie (PhD), Mizane(PhD), Ins. Simeneh Kiros (PhD),Dr. Biruk H., and all my Instructors and Professors of the Constitutional and Public Law stream. And my class meets and colleagues. "Thanks you all"

Special thanks also to "Bridge Ethiopia transit", my real brother Goush W/tensai. And his wife Letay G/kirstos, Tsegay Kebede and staff members, for your continuous enthusiastic support and encouragement in the course of attending my post Graduate study and conducting my research. "Thank you very much"

I would also like to thank all of my friends, particularly, staff members of AAU law and governance studies, all library members of AAU, Desta (librarian), staff members at HoF, CCI and Federal Supreme Court. Kuma Tufa, Wendyirad, Almaz, Alemnesh, Minale, Petros, Kifle, Genet (HoF), Efrem, Gebeya, Zelalem, Abdi (CCI) and so on.

I would provide my thanks also to my friends, who in one way or another contributed to the successful completion of my study, Biruk Tadese with Meaza, Tsehay Assefa, Wendater H., Henok H., Almaz Kiros, Dawit Og., Dawit F., Mekonnen A., Zeray G., Musie G., Solomon H., Niguse, Amanuel, Girmachew, Atkilt, Danny, Moke, Bahta, Solomon, …etc.

I would also like to thank all of my interviewees that have spent their precious time in providing me all the necessary information in this vital area of study.

ABRAHAM AMARE AFFEFAW

February, 2018

Addis Ababa

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LIST OF ABBRIVATIONS AND ACRONYMS

- AMPARO PROCEEDING-JUDICIO DE AMPARO
- CCI- COUNCIL of CONSTITUTIONAL INQUIRY(Ethiopian)
- CONSEIL CONSTITUTIONNEL(France)-CONSTITUTIONAL COUNCIL
- CSA- CENTRAL STATISTICS AGENCY of ETHIOPIA
- EC – ETHIOPIA CALENDER
- EMPEROR'S CHILOT- EMPERORS' COURT
- EPRP- ETHIOPIAN PEOPLES' REROLUTIONARY PARTY
- FETHA NEGEST-LAW of the KINGS
- FCCA- FEDERAL CONSTITUTIONAL COURT ACT of GERMANY
- FDRE- FEDERAL DEMOCRATIC REPUBLIC of ETHIOPIA
- FJAC-FEDERAL JUDICIAL ADMINISTRATION COUNCIL (Ethiopia)
- FRG- FEDERAL REPUBLIC of GERMANY
- GC- GREGORIAN CALENDAR
- HoF- HOUSE of FEDERATION
- HoPR- HOUSE of PEOPLES' REPRESENTATIVES
- ICC- INDIVIDUAL'S CONSTITUTIONAL COMPLAINT
- IC-SOUTH AFRICAN INTERIM CONSTITUTION of 1993
- INCIDENTER- INCIDENTAL
- KAMMER (Germany) -CHAMBERS
- NGO – NON GOVERNMENTAL ORGANIZATION
- PDRE-PEOPLE'S DEMOCRATIC REPUBLIC of ETHIOPIA
- RSA- REPUBLIC of SOUTH AFRICA

- SHENGO-ASSEMBLY(Ethiopia)
- SNNPR- SOUTHERN NATION NATIONALITIES and PEOPLES REGION
- SER'ATA MANGIST- LAW of the GOVERNMENT
- SUPREMA CORTE de JUSTICIA-MEXICAN SUPREME COURT of JUSTICE
- TGC- TRIBUNAL of CONSTITUTIONAL GUARANTEES(Peruvian)
- TGE-TRANSITIONAL GOVERNMENT of ETHIOPIA(1991– 1994)
- UDHR- UNIVERSAL DECLARATIONS on HUMAN RIGHTS
- USA- UNITED STATES of AMERICA
- VERFASSUNGSBESCHWERDE(Germany)- CONSTITUTIONAL COMPLAINT
- VERFASSUNGSGERICHTSHOF(Austria)- CONSTITUTIONAL COURT

LIST OF CASES

- W/ro ASTER ABEBE Vs ATO GETACHEW TAFESE & ZENIT MOHAMED (Annexed No.1)
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- W/ro MAMIT SEBLE Vs MULU GURMU(Annexed No.6)

Chapter I ------Introduction

1.1Back Ground of the Study

Individual's Constitutional Complaints or Amparo Procedure is a constitutional litigation action forwarded by way of complaints against the violation of governmental organ or its officials or actions. The Individual's Constitutional Complaints or an Amparo "Proceeding is an extraordinary judicial remedy specifically conceived for the protection of constitutional rights against harms or threats inflicted by authorities or individuals."[2] Individual's Constitutional Complaints (ICC) and Amparo Proceedings (judicio de amparo) have basically analogous characteristics. So, for the purpose of this writing these phrases are used interchangeably.

"The amparo proceeding was first introduced in Mexico in 1857 as the juicio de amparo, evolving in that country into a unique and very complex institution exclusively found in Mexico."[3] Gradually, it became the Latin American constitutional dispute resolving procedural mechanism institutionally. It was also spread all over the world, most of which in Europe. The concept was also modified by the Constitutional Courts' System. "This constitutional litigation means was introduced in the American continent during the 19th Century, and although similar remedies were established in the 20th Century in some European countries, like Austria, Germany, Spain and Switzerland, and also in Canada, it has been adopted by all Latin American countries, except in Cuba, being considered as one of the most distinguishable features of Latin American constitutional law."[4]

"In Latin American countries the amparo mechanism is expressed in different names. The institution has been described in various ways, always meaning the same, such as: Amparo (Guatemala); Accion de amparo (Argentina, Ecuador, Honduras, Paraguay, Uruguay, Dominican Republic, Venezuela); Accion de tutela (Colombia); Proceso de amparo(El Salvador, Peru); Recurso de amparo (Bolivia, Costa Rica, Nicaragua, Panama); Recurso de proteccion (Chile) or Mandado de seguranga and mandado de injuncao (Brazil)."[5] In all of the Latin American countries, the provisions for the action are embodied in the constitutions; and in all of them, except Chile, the actions of amparo have been expressly regulated by statutes, particularly in special statutes related to constitutional litigations, with the exception of Panama and Paraguay where the amparo action is regulated in the general procedural codes (Codigo Judicial, Codigo Procesal Civil).[6] Meanwhile, there are also similar proceedings to amparo recourse or action or procedure developed in countries of Europe the so called Individual's Constitutional Complaints system or practice, in countries such as the Austria, Germany, Spain, Switzerland, and Belgium. In some European countries, specially, Austria, Germany, Spain,

[2] Allan R. Brewer-Carías, The Latin American Amparo Proceeding and the Writ of Amparo in the Philippines, City University of Hong Kong Law Review, Vol.1.1-2009, p. 73
[3] *Id, Supra note 1,* p.77
[4] Mario Patrono, THE PROTECTION OF FUNDAMENTAL RIGHTS BY CONSTITUTIONAL COURTS – A COMPARATIVE PERSPECTIVE, (pp 401-426), (2000) 31 VUWLR, p.405
[5] *Id, Supra note 1,* p.78
[6] *Id, Supra note 1,* p.79

Switzerland and Belgium, the Individual Constitutional Compliant was adopted in their legal system. In Europe, several countries have adopted a system of individual constitutional complaint, in a variety of structures and forms.

On the other side, there are also unique kinds of practicing, for example, under the Ethiopian constitutional litigation experience indicated that this kind of Individuals' Constitutional Complaints system has been experiencing. Because of the Ethiopian existing Constitutional Adjudication system is established under the House of Federation (H^oF) which is the Second Chamber or Upper House that is a Parliamentary organ assumed to interpret the constitutional matters, it seemed based on the concept of "who must be the guardian of the constitution?"[7] This strange novel function created scholarly criticisms on both sides by those people working on this field. Most of the time, the countries experiences indicated that whether it is vested to a Constitutional Courts or is given to the Supreme Courts, the constitutional/judicial review is a power of the judiciary. The Ethiopian system gives power to the political branch of the government i.e. to the H^oF is unusual thereby it creates further argumentations on both sides. Hence, it is notable that the Individual's Constitutional Complaints arrangement highly interrelated with the entire system of the County's Constitutional Interpretation/Adjudication mechanism. Thus, these and other reasons inspired this writing and aimed to research this paper.

1.2. Statement of the Problem

For the purpose of this thesis the Constitutional Interpretation or Adjudication is vested on the House of Federation and by the help of the Council of Constitutional Inquiry, the mechanism of Individual's Constitutional Complaints system of Ethiopia is affected by the Legal and Institutional arrangement. This novel or unique arrangement has its own features either on positive or negative impacts. But as a system, the purpose of this paper to focus on the problems that the mechanism lagged behind when comparatively looking to other systems that they provided the best practices specially in protection of Individual's Constitutional Complaints on violations of human rights by authorities. The unique structure of the Ethiopian counterpart in this concern has its own problems.

First, the novel mechanism of the current Ethiopian Constitutional Interpretation is a power given to the House of Federation and Council of Constitutional Inquiry are initiated questions of Independency and Impartiality. Hence, this biased inclination or outlook perhaps came from their very nature of political domination of a party that especially the Legislative body what has to do its vested powers. So, does the Constitutional Interpretation power was an inherent power to a legislature is one main question to be answered?

Second, does the House (HoF/CCI) is effective on investigating and deciding on constitutional matters that they needed an interpretation or review of constitutionality on permanent bases by itself and competent as judiciary by its own capacity raised questions.

[7] *Id, Supra note 3*, p.403

Third, the legal and practical structure of averting the violations of fundamental rights and freedoms enshrined under the constitution needed a day to day attention in order to its realization and protection, so the system evidenced shortenings on addressing the demands of constitutional interpretation problems. Fourth, does the intention of the FDRE's Constitution intended to complete exclusion the Judiciary from the Constitutional Review system of the overall mechanism or not are the main problems to be addressed by this thesis.

Comparatively, for finding good practices and furnishing best experiences, this paper tried to examine on those two main systems of Constitutional Adjudication/Review mechanisms generally. For instance, it gave also analysis based on some selected countries of the Amparo Proceedings from experiences of Latin American States and Individual's Constitutional Complaints of the Continental Europe countries. Amparo proceedings in Latin America can be filed by any injured person against harms or threats inflicted to such rights by authorities and individuals. Since 19th century it spread in all Latin American Countries, being one of the most important institutions of Latin American Constitutional Law, reflecting the continued process of seeking for the progressive protection of constitutional right. Whereas, such kind of protection of constitutional right is also known as Individuals' Constitutional Complaints developed in Europe.

Finally, this thesis is aimed to focus on the contemporary FDRE Constitutional Interpretation/Adjudication system in general manner and the Individual's Constitutional Complaints system in specific approach of its legal and practical arrangement. For the purposes of transplanting and improving of best practices of those selected countries thereby, this paper will try to study and research other countries' experiences of adjudicating cases submitted by Individual's Complaints on constitutional issues of violations of human rights by authorities on its comparative perspective. Then the thesis also intended to focus on giving detailed emphasis and discussions of the current legal and practice experiences of the Ethiopian system in this regard.

1.3. Research Questions

The research question includes:-

Q1. What is Individual Constitutional Compliant or Amparo in essence and what makes it an extraordinary judicial remedy?

Q2. Generally, what are the procedural and substantive requirements of Individual Constitutional Compliant and what it differs from ordinary remedy?

Q.3. Where does the Ethiopian law and practice categorized in accordance with such kind of Individual's Constitutional Complaints?

Q.4.What does Ethiopia adhering to a kind of procedural, substantive and enforcement system practices? What are the Constitutional Adjudication/Judicial Review models available in general? What model Ethiopia fixed-up?

Q.5. Does the FDRE Constitution furnish sufficient ways of access to justice to those individual complaints to avert human rights infringements by authorities in comparison with the Latin American or European experiences in protection of human rights through the mechanism of Amparo Proceedings or Individual's Constitutional Complaints procedures?

Q.6.Under the Ethiopian contemporary Constitutional Review mechanism, which institutions are authorized to do so?

Q.7. Does the FDRE Constitution intended to exclude completely the Judiciary from interpreting the Constitutionality issues or the "Framers Intention" was intended to give the constitutional interpretation power to the House of federation in all matters exclusively? Therefore, these are the main issues or questions to be addressed in this paper.

1.4. Objective of the Study

The objective (goal) of this research paper is to investigate the legal and practical structure of the current Ethiopian Individual's Constitutional Complaints on protection of human rights violations through institutional mechanism. Moreover, by virtue of comparative perspective, to see the principal trends of the amparo proceeding in Latin America, which is an extraordinary judicial remedy specifically conceived for the protection of constitutional rights,[8] as well as how it worked in Europe, several countries have adopted a system of Individual Constitutional Compliant, in a variety of structures and forms. For further improvements, to see also whether those experiences are feet to Ethiopia.

For example, the Latin American is achieved by creating a specific judicial remedy for their protection, called the amparo proceeding, with different procedural rules to those provided in the general civil procedural code, in cases of protection of personal or property rights.[9] The achievements could also found in most of European Countries through the implementing of Constitutional Courts and the procedure of Individual's Constitutional Complaints, particularly, for averting violations of fundamental rights and freedoms. Thus, the focus of this research paper is to study those experiences and achievements of others, then plainly to furnish a finding for further utilities and to share best experiences from those selected Countries.

For the purpose of the contemporary Ethiopian Individual's Constitutional Complaints system and comparative observation of the Latin American as well as European Countries the aim has been thoroughly discussed. Thereby, this writing has two main objectives. These are the general and specific objectives.

[8] *Id, Supra note 1*, p.77
[9] *Ibid.*

- ***Overall objective***

The prime objective of the research is to identify key legal and practical gaps that have paramount impact on individual constitutional complaint mechanism. Further, to find out whether the Individual's Constitutional Complaints or Amparo procedure as an institutional mechanism is feet to Ethiopian system.

- ***Specific Objectives***

- To assess the scope and content of the ICC or the Amparo procedure is an extraordinary judicial remedy.

-To explore the extent to which there is any difference or similarity exist between the Amparo Procedure and Individual Constitutional Compliant. And what is then the Ethiopian counterpart.

- To identify the core procedural rights and general principles which are necessary safeguard the right to seek Amparo procedure or ICC.

-To assess Ethiopian Federal Constitutional provisions and procedural laws quite relevant to the protection of individual's constitutional complaints mechanism.

- To examine how comparatively, applies this individual compliant mechanism as an institution.

1.5. Significance of the Study

-This research is hoped to serve Ethiopia to provide effective protection for ICC or Amparo Proceeding thereby, provide the importance of such institutional mechanism.

- The study may also serve a valuable resource for judges, adjudicators, legal practitioners, government officers, nongovernmental advocates, and academics specially for House of Federation/CCI and Courts alike in their various efforts towards the common goal of strengthening Individuals' Constitutional Complaints system in Ethiopia. This may assist not only in meeting changing realities in the field, but also in setting the bases for Individual's Constitutional Complaints institution.

1.6. Research Methodology - A number of research methods were employed:

- Desk research:- In researching this paper, to review back ground information , a wide range of publicly-available material has been scrutinized, including academic literature as well as reports by governments, NGOs and international organizations. Relevant legal instruments, as well as jurisprudence on international, regional and national levels, have been examined. The study also contains findings of a survey of the protection of Individuals access to the right of Constitutional Complaints mechanisms.

- Legal analysis of Domestic laws: Most importantly, critical analysis of the national legislation (Federal) and other subordinate legislations related with issues that are relevant to protection of ICC conducted.

- The researcher also employed non doctrinal legal research method through conducted continuous personal observation, interviews with key actors involved in the Ethiopian ICC system to explore my provisional findings of current practice.

- Document Analysis: Official statistics pertaining to ICC; relevant secondary documentary resources, such as reports, and country of origin information from reliable sources are consulted and analyzed.

- Personal Observation: The researcher has been working as private licensed lawyer. The researcher ample professional experience in a diverse range of protection settings, hence, will be reflected in the research and with professional experience in a diverse range of protection settings.

- Interviews and discussions with key actors: In the course of this research, Interview and discussion with at least 6 personnel of key actors in the HoF and CCI are made using flexible unstructured questionnaires, which were adapted to each context and each interviewee.

1.7. Scope of the Study

This paper is limited on issue which the writer believes as indispensable for the subject matter. Hence, the most returning theme throughout this paper is firstly, the main target of this research is to identify and scrutinize the contemporary Ethiopian ICC mechanism i.e. the law and practice. Secondly, to make it vivid (bright) by virtue of comparative aspect of other countries' experiences of Amparo Proceeding and ICC systems of Latin Americans and Europeans. By doing so, to find out whether there exist best practices of others and to see comparative options. In fact, if these findings of best practices of other some selective countries are fit and ample with our legal system and practice, then it will be proper to make fruitful suggestions based on those discoveries.

1.8. Limitation of the Study

The writer admits from the outset that the research is by no means exhaustive due to two main limitations:

- Though the views of Amparo Procedure or ICC are very important for the comprehensiveness of the issue this research strives to reveal, budget and time constraints had been an important impediment.
- The other but not merely genuine problem could be faced the bureaucracy and commitment. This scenario made difficult for the researcher to conduct filed visit mainly in the case of ICC instead forced to focus on qualitative data.

However, adopting this highly qualitative research methodology enables the researcher to provide an interpretative measurement based on the collected data, interviewees with key actors working in the area and continuous personal observation.

1.9. Structure of the Study

The paper encompasses four chapters. The first chapter deals with introduction and background. The second arranges with the comparative perspective of this research. The third chapter discusses to Ethiopian legal and practical experiences with pertinent matters of Individuals' Constitutional Complaints system. The fourth considers with conclusion and recommendations complement.

Chapter II------Comparative Perspective

2.1. General Essence or Highlight of Individual's Constitutional Complaints and Amparo Proceedings

2.1.1. General overview

One of the complex natures of the ICC or Amparo is the basic form of protection that is directly determined by the character of the regulation with which the material on rights and freedoms and their protection is regulated.[10] The complexity is also found in that the fundamental rights and freedoms that under which law the protection shall be determined (the substantive requirement). Under which mechanism the human rights protection is to be adopted (the procedural and institutional requirements) i.e. does it enshrined in the Constitution, Constitutional provisions, laws, charters or declarations? And which institution is vested to protect human rights violations is also significant issue.

As it is defined in Prof. Tanja Karakamisheva's writing, "The term Constitutional Complaint is a literal translation from the German term *Verfassungsbeschwerde*."[11] The other synonym of Individuals' Constitutional Complaints is Amparo Proceeding or Juicio de Amparo, but also the CCI and Amparo have differences and similarities lied in their systems of application and procedures. In fact, Amparo Proceeding is emerged previous to ICC which is, the later, conceived subsequent to Amparo greater than half a century. "Amparo Proceeding was appeared in Mexico in 1857 as the juicio de amparo. Some writers also inscribed this juicio de amparo was introduced even before 1857, in the state of Yucatán of 31 March 1841. Its first legal consolidation had to be found in the Constitution of the Mexican state Yucatán of 31 March 1841."[12] By now, this proceeding spread all over Latin American States, moreover, it is also applicable in some South Asian countries like Philippines.

"The first traditional basis for a Constitutional Complaints is found in American Institute of Judicial Review, which developed a doctrine of judicial review that empowers courts to nullify government acts if they are not in accordance with the constitution."[13] "The second basis for the constitutional complaint is found within Spanish legal tradition in the institute *procesos forales or recours de amparo*."[14] In particular, the law of amparo is worked through the law for judicial protection of the basic citizen's rights from 1978, which stated the specific fundamental rights that this legal remedy can be submitted with the objective of protecting them through judicial remedies.[15] On the other hand, the continental European Legal systems treat constitutional complaints as

[10] Tanja Karakamisheva (Ph.D. Prof.); Constitutional Complaint- Procedural and Legal Instrument for Development of the Constitutional Justice(Case Study – Federal Republic of Germany, Republic of Croatia, Republic of Slovenia and Republic of Macedonia), p.1
Also, Availablein:http://www.venice.coe.int/WCCJ/Papers/MKD_Karakamisheva_E.pdf
[11] *Ibid, supra note 9, at footnote 2*, p.1
[12] Axel Tschentscher / Caroline Lehner, The Latin American Model of Constitutional Jurisdiction:Amparo and Judicial Review- Research Paper No. 2296004 at ssrn.com p.1.
[13] *Id, supra note 9*, p.2.
[14] *Id, supra note 9*, p.3.
[15] *Ibid.*

exceptional and specific legal instrument, one that can be used only if the national legal order does not foresee any other method of protection of the breached right.[16] So, these are considered as the basis.

2.1.2. Models of Constitutional Adjudication

There are two main types of constitutional adjudication or judicial review mechanisms in general. These are the Constitutional Court or the Kelsenian model and United States model of Constitutional/Judicial Reviews. Indeed, there is also an exceptional kind of concentrated constitutional review or adjudication system to which it is experienced outside of a Constitutional court or exterior to Supreme Court's jurisdiction. The Ethiopian model is something a new experience emerging out of these two above mentioned models. The Ethiopian model shall give a power to the House of Federation (H^oF) which is the Upper House to see and decide constitution interpretational matters, instead of giving the jurisdiction to the Constitutional Court or to the Supreme Court to review the constitutional issues. The Ethiopian model seems to give more prominence to the majority a respond to the famous issue known as the Counter-majoritarian difficulty to which it is against that an elective democracy offers room to a few judges who can overthrow the will of the majority. This is tantamount to judicial review with counter-majoritariant, because it allows judges to thwart the will of the majority.[17] Where, the Ethiopian emerging model has further created a room for argumentation on both sides. More emphasis will be added in the next chapter on this regard.

There are also models like the New (British) Commonwealth Model cannot be classified either under the American or the European model ("Austrian" (Continental - Constitutional Review) Model (based on Kelsen's Model of 1920).[18] It is characterized by a concentrated constitutional review under the jurisdiction of the Supreme Court consisting of ordinary judges without political nomination; as a rule, it involves preventive (a priori) review and the consulting function of the Supreme Court, although repressive (a posteriori) review is also possible; decisions take an erga omnes effect.[19] The Mixed (American Continental) Model with the elements of both a diffuse and concentrated system; despite the constitutional review power of the central Constitutional or Supreme Court (or its special chambers), all ordinary courts in the particular country are entitled to not apply laws deemed as not in conformity with the Constitution.[20] The "French" (Continental) Model (based on the model of the French Constitutional Council – Conseil Constitutionnel- of 1958), where constitutional matters are subject to review by special bodies of constitutional review (most often the Constitutional Council) or by special chambers of ordinary Supreme Courts (concentrated constitutional review) in special proceedings (principaliter), provided that constitutional review is mainly of a preventive (consultative) character (although these systems also have particular repressive forms of constitutional review,

[16] *Id, supra note 9*, p.4
[17] Dejonghe Matthias, Constitutional Courts: Democracy vs. Juristocracy? Faculty of Law Ghent University Academic Year 2014 – 2015, Education 'Master of Law', 00801143, p.2
[18] Arne Marjan MAVČIČ (Liaison Officer, Constitutional Court, Slovenia) REPORT "SOME COMPARATIVE COMMENTS TO THE INTRODUCTION OF CONSTITUTIONAL REVIEW IN THE STATE OF PALESTINE", SEMINAR ON "MODELS OF CONSTITUTIONAL JURISDICTION" Ramallah, 25-26 October 2008, CDL-JU(2008)026, p. 2&4
[19] *Id, supra note 17*, p.4
[20] *Ibid,. supra note 17*, p.4

especially with reference to electoral matters).[21] There is also a model similar with the Ethiopian one is arranged 'Other Bodies' with the Power of Constitutional/Judicial Review e.g. the National Council, Parliament or specialized parliamentary bodies, etc.[22]

Generally, the said models have their own features. In fact, they have also an interaction between them. Even if the concern of this thesis is particularly focused on the Individuals' Complaints systems of some countries in comparative perspective, it is useful to distinguish the types and features of the judicial review or constitutional review in general. Mainly the system of the Countries' revealed there are three types of shaping of legislated laws and decisions through reviewing mechanisms. *These are the Political review, the Judicial Review and the Mixed Review systems are available*. Meanwhile, the Judicial Review of legislation is categorized into two main systems or principles of review mechanism, these are the Concrete Judicial Review and the Abstract Judicial Review methods in common. While the concrete judicial review associated with Amparo proceedings in Diffuse Judicial Review called the Integrated Constitutional Jurisdiction, and the abstract judicial review that applied with the concentrated judicial called the Specialized Constitutional Jurisdiction. Moreover, there is also a kind of varied system that the Concrete Judicial Review find combined with Concentrated Judicial Jurisdiction.

The other kind of the Judicial Review system established a model of integrated constitutional jurisdiction.[23] "Depending on the state, this was achieved by amparo-proceedings or by a general competence of judges for concrete judicial review, i.e., a case-by-case decision about the constitutionality and applicability of statutes, also known as "incidental" review."[24] "Both parts of this led to a system of diffuse judicial review, where normally all or at least multiple courts have the competence to review the constitutionality of legal provisions while deciding specific cases."[25] These constitutional litigation issues differ, as the case may be, on their legal tradition or constitutional review systems. To give some more emphasis, this paper is highly concerned on Individual's Constitutional Compliant litigation proceedings or the Amparo Proceedings for which these models are mainly applied and interacted with each other.

2.2. Constitutional Court's practices of European Countries

For more emphasis, it is constructive to look on some European countries' experiences in this regard that these selective states applying to the Constitutional Court in their legal system. Ahead of performing the constitutional court, they were adherences of the European legal tradition of the Parliamentary Supremacy and the Rule of Law. It is also acknowledged that they began to incorporate and to materialize of the constitutional courts or the Kelsenian Courts since 1920 onward in their Constitutions or Basic Laws, because some of the European states such as the Germany called their constitution are the Basic Law. This system of constitutional complaints was developed from the

[21] *Id, supra not 17*, p.5
[22] *Ibid.*
[23] *Id, supra note 11*, p.11
[24] *Ibid.*
[25] *Ibid, supra note 11*, p.11

doctrine of the Austrian jurist of the Hanse Kelsen, in almost all eastern European and adherences of continental European legal system. Derived from Kelsenian constitutional court system, the continental European legal system followers started to transplant and incorporate the constitutional compliant proceeding into their Constitution or Basic Law or Fundamental Law. As it is mentioned above, it is thoroughly selected some continental European countries as well as one African country which are also implementing the constitutional courts system in their current application of resolving constitutional disputes according to centralized constitutional court method, but in light of that they arranged based on different proceedings. In Europe, several countries have adopted a system of Individual's Constitutional Complaints, in a variety of structures and forms.[26] To this evidence, these randomly selected countries are discussed hereafter in the following manner:-

2.2.1. The Austria's experience

"The first European centralized systems of judicial review were established in Czechoslovakia and Austria, respectively, by the Constitution of Czechoslovakia of February 29, 1920, and by the Constitution of Austria of October 1, 1920."[27]

In addition to the extant incidenter procedure for the assessment of the constitutionality of legal acts set forth in articles 89 and 135(4) of the Constitution, the current text of the Austrian Constitution provides two possible avenues for individuals to directly access to the Constitutional Court ("Verfassungsgerichtshof") in order to challenge legal acts allegedly violating their fundamental rights.[28]

The first avenue (so-called Bescheidbeschwerde) is described at article 144 of the Constitution, which allows direct individual complaints against an administrative decision violating a person's rights through the application of an illegal general norm. As a precondition to the admissibility of the challenge, "the applicant is requested to have previously exhausted all remedies made available by administrative law, so that, in practice, only the ruling of the last (supreme) administrative instance may be a subject of the Court's review."[29] Moreover, the alleged violation can be filed only within six weeks of its delivery to the Constitutional Court.

With regard to the second avenue, articles 139 and 140 of the Constitution indicate that the Constitutional Court pronounces on the unconstitutionality of statutes and on the illegality of regulations when the application alleges direct infringement of personal rights through such unconstitutionality or illegality in so far as the law or the regulation has become operative for the applicant without the delivery of a judicial decision or the issue of a ruling.[30] Admissibility requirements are therefore quite demanding: in order for the complaint to be admissible, the applicant

[26] Gianluca Gentili-A COMPARISON OF EUROPEAN SYSTEMS OF DIRECT ACCESS TO CONSTITUTIONAL JUDGES: EXPLORING ADVANTAGES FOR THE ITALIAN CONSTITUTIONAL COURT-ITALIAN JOURNAL OF PUBLIC LAW – VOL. 4 ISSUE 1/2012, p.164
[27] *Id, at foot note 25*,p.165
[28] *Id, supra note 25*,p.166, see also, Austria's Constitution of 1920, BGBl No. 1/1920 (Austria), Reinstated in 1945, with Amendments through 2013-Articles 89 and 129
[29] *Ibid.*
[30] Austria's Constitution of 1920, Reinstated in 1945, with Amendments through 2013-Articles 139 and 140

(either a natural or a legal person) must show that no chance of obtaining another legal remedy is available and that neither a judgment nor an administrative ruling has been delivered in the case.[31] Moreover, the alleged harm to the applicant's rights must be personal, direct and actual. Both types of individual constitutional complaints clearly have a subsidiary character and are designed only to supplement the other avenues available to an individual to challenge the constitutionality of normative enactments (mainly the incidenter proceedings). [32]

2.2.2. The Federal Republic of Germany's experience

In, Germany, the individual's constitutional complaints arrangement was not incorporated under the constitution; rather the recourse was converged after the end of the II world war. Gianluca Gentili asserted in his writing that Germany's former constitution didn't include the ICC mechanism as : "The original text of the Constitution did not establish a system of individual's constitutional complaints. This system was first introduced in 1951 with the enactment of the Law on the Federal Constitutional Court, which also marked the beginning of the activities of that Court. The system was then entrenched in the Constitution with a constitutional amendment in 1969."[33] "The recourse can be lodged – without cost and with few formal requirements – by every person (both citizens and foreign nationals, legal and natural persons) against an action or omission of the public powers allegedly violating civil and political rights entrenched in the Constitution."[34] Germany has both the Federal as well as the Regional Constitutional Courts. There are also conditions to be fulfilled in order to limit the complaints using the system and avoid the overburdening of the Court. These are, a) the previous exhaustion of all available legal remedies; b) the existence of a personal, direct, and current interest in the recourse; c) filing within a statute of limitation: the recourse can be lodged with the Court only within one month from the date the administrative act or the judicial decision has been issued, or one year from the entry into force of the challenged statute; d) the possibility to challenge only self executing statutes.[35] "The screening of the petitions is entrusted to special three-judge panels of the Court, the so-called "Kammer" (chambers) during a prehearing stage, and the decision is not appealable." [36] The Court also has the power to issue fines to those who lodge applications lacking the very basic elements for their admissibility. [37] In addition to these conditions, the Law on the Federal Constitutional Court states that a constitutional complaint will be admitted to consideration only if it has "fundamental constitutional significance" (i.e. the issue has not already been addressed by the Court), and the complaint may suffer "especially grave disadvantage as a result of refusal to decide on the complaint."[38] This commitment to protect of human dignity and fundamental rights is celebrated in article I of the German Constitution, which famously states that: 'Human dignity shall be inviolable

[31] *Id, supra note 25,p.*167
[32] *Ibid.*
[33] *Id, supra note 25*, p. 167
[34] Federal Constitutional Court Act, *as last amended July 16, 1998, BGB1, I at 1473 (F.R.G)* , Article 93
[35] *Id, supra note* 25, p.168-169
[36] *Ibid.*
[37] *Ibid.*
[38] Article 93a, cl.2, of the Law on the Federal Constitutional Court (F.R.G.)

and inalienable.' To respect and protect it shall be the duty of all state authority that is the legislature, the executive and the judiciary as directly applicable law.[39]

In Germany's ICC system, as of today, the Court reviews in full about one percent of all the individual constitutional complaints lodged, but according to some commentators, such complaints result in some of its most significant decisions and make up more than fifty percent of its published opinions.[40]

To conclude, the Germany's Constitutional Court achieve two main judicial review functions. The first is that as an institution it guarantees the protection of human rights and freedoms. The other is, as a system it established the Constitutional review justice mechanism out of judicial jurisdiction within its society. "What is referred to here is a court that served as a model that was used for building many other constitutional courts within Europe, because exactly this court succeeded in uniting the American idea of basic rights of the human and citizens with Kelsen's abstract control of norms."[41]

2.2.3. The Spain's experience

In Spain, the system of individual constitutional compliant or amparo recourse is affected by both experiences i.e. the Latin American and European systems. Influenced by the example of the German Verfassungsbeschwerde, the Spanish "individual appeal for protection" ("recurso de amparo") or "constitutional amparo" was introduced by article 53, cl. 2 of the 1978 Constitution.[42] As it stated that any citizen may assert a claim to protect the freedoms and rights recognized in section 14, by means of a preferential and summary procedure before the *ordinary courts* and, when appropriate, by lodging an individual appeal for protection (recurso de amparo) to the *Constitutional Court*. However, a "recurso de amparo" had been originally established in Spain by the 1931 Constitution of the Spanish Second Republic, at that time influenced by both the Austrian model of individual constitutional complaint adopted in 1920 and the Mexican model.[43] What is impressive for Spain is that, this country is implementing both models which are the Kelsenian as well as the Latin American systems at the same instant. The constitutional amparo was then implemented in the Organic Law on the Constitutional Court enacted in 1979. [44] In Spain, the amparo procedure shall be complained by natural as well as judicial persons. By now in Spain, any natural and legal person (not just citizens) with a "legitimate interest" can apply to the *Tribunal Constitucional* by means of the constitutional amparo to challenge violations of the rights protected in articles 14-30 of the 1978 Constitution allegedly caused by actions or omissions of public powers .[45] The 2007 reform, therefore, introduced an additional accessibility requirement: the applicant needed now demonstrate the

[39] Germany Federal Constitution [GG] (F.R.G.) or The Basic Law, Article I(1)
[40] Gentili,Gianluca (2011) " A Comparative Perspective on Direct Access to Constitutional and Supreme Courts in Africa, Asia, Europe and Latin America: Assessing Advantages for the Italian Constitutional Court," Penn State International Law Review: Vol. 29: N o. 4, Article 2, p. 719-20 Available at: http://elibrary .law.psu.edu/psilr/vol29/iss4/2
[41] *Id, supra note 9*, p.6
[42] *Id, supra note 25*, p.169-*see also*, Spanish Constitution 1978 with Amendments through 2011 , Article 53
[43] *Id, supra note 25*, p.169, *at foot note 29*
[44] *Ibid*, p.169
[45] *Id, supra note 25*, p.170

"significant constitutional relevance" of the recourse presented. [46] According to article 50(1) of the Organic Law, in order for the recourse to have "significant relevance," the issue must be significant for the "importance for the interpretation, application and general efficacy of the Constitution and for a determination of the content and significance of fundamental rights."[47]

At the beginning, Spain had some problems of implementing on Individual Constitutional Complaints, because its citizens appeared before the Constitutional Courts without having enough knowledge of what is stand for. Even the constitutional court system faced troubles for the functionality of the court with regard to matters of the cases submitted to it. Since the enactment of the Constitution and the introduction of the ICC, an increasing number of appeals for protection have reached the Constitutional Court, most of them claiming violations of the rights granted under article 24 of the Spanish Constitution: effective protection from judges.[48]

Hence, the 2007 reform introduced new access of constitutional compliant requirements such as the applicant needed now demonstrate the "*significant constitutional relevance*" of the recourse presented.[49] Today, the vast majority of applications lodged with the Court are declared inadmissible due to the very lack of the constitutional nature of the alleged violation.

2.2.4. The South African experience

The South African Constitutional Court established in 1994 by the 1993 Interim Constitution. South Africa's Constitutional Court was recognized in 1994 out of the process of the democratic transition.[50] "In 1993, South Africa adopted a transitional or Interim Constitution, enshrining a non-racial, multiparty democracy, based on respect for universal rights." [51] "On February 14, 1995, the Constitutional Court of the Republic of South Africa was inaugurated."[52] The Constitutional Court is the 'highest court in all constitutional matters', it derives its legitimacy, authority and functions directly from the Constitution.[53] It is important to reiterate that the introduction of the Constitutional Court furnishes its own distinctive nature which applies the Centralized and Decentralized models of Constitutional adjudication systems with the first instance and appellate judicial and constitutional review jurisdiction. A hybrid of decentralized and centralized systems, the Constitutional Court has characteristics of a final court of appeal as well as characteristics of a court of constitutional review.[54] To this evidence, the Constitution of the Republic of South Africa, Section 173 stated that the Constitutional Court, Supreme Court of Appeal and High Courts have the inherent power to protect

[46] *Id*, p.171-*See also*, Article 50(1)(b) of the Spanish Organic law on the Constitutional Court as amended in 2007.
[47] Article 50(1) of the Spanish Organic law on the Constitutional Court as amended in 2007
[48] *Id, supra note 25*,p.170-171
[49] Spanish Organic Law no. 6/2007, Article 50(1)
[50] JACKIE DUGARD. COURT OF FIRST INSTANCE? TOWARDS A PRO-POOR JURISDICTION FOR THE SOUTH AFRICAN CONSTITUTIONAL COURT-(2006)22 SAJHR-18/07/2006,p.261
[51] Hoyt Webb, THE CONSTITUTIONAL COURT OF SOUTH AFRICA:RIGHTS INTERPRETATION AND COMPARATIVE CONSTITUTIONAL LAW, JOURNAL OF CONSTITUTIONAL LAW, [Vol. 1: 2 Fall-1998], p.205, See also, South African Interim Constitution of 1993 (IC), Chapters 7, & 98
[52] *Id*, p. 206
[53] *Ibid, See also*, Constitution the Republic of South Africa of 1996, Section 167(3) (a) and Chapter 8 of the Constitution
[54] *Id, supra note 49,p.262*

and regulate their own process, and to develop the common law, taking into account the interests of justice.[55] Thus, it doesn't questionable that the country was adhering to the Common Law tradition to which the system interrelated with the decentralized or diffused system of Judicial Review, on one hand, and it is also implementing the Centralized Constitutional Adjudication mechanism in the other hand.

In Republic of South Africa, accordingly, direct access will be governed by this article 167(6), which allows a person, 'when it is in the interests of justice and with leave of the Constitutional Court' '(a) to bring a matter directly to the Constitutional Court' or, '(b) to appeal directly to the Constitutional Court from any other court.' [56]

As with the Individual's Constitutional Complaints system of South Africa is concerned which derived from Article 167(6) of the Constitution and as it is stated that National legislation or the rules of the Constitutional Court must allow a person, when it is in the interests of justice and with leave of the Constitutional Court- (a) to bring a matter directly to the Constitutional Court; or (b) to appeal directly to the Constitutional Court from any other court; seems very impressive legally and institutionally. But in practice this might be hard to apply, for two reasons. The affordability and accessibility of the constitutional court remained at question. The court looks unfair for those economically poor and tenuously live people. "The first hurdle a poor person must overcome in any justice system is accessing that system."[57] In South Africa the usual difficulties of accessing justice are exacerbated by gross socio-economic inequalities and the remoteness of law from most peoples' lives.[58] In the absence of legal aid for constitutional matters, poor people are largely unable to take cases through the normal judicial process, which is both lengthy and costly.[59] So, this evidenced that the pro-poor direct access to constitutional court or to the entire access to justice apparently unattainable.

The Individual's Constitutional Complaints mechanism of the South Africa clearly permits direct access to the Constitutional Court as well as to any court of the land on infringements of human rights. But, it has also a restraint conditions that obstacle to the direct access to justice through the constitutional court upon the violation of the fundamental rights.

2.3. Amparo Proceedings and Experiences of the Latin American Countries

Generally, Amparo Proceeding was appeared in Mexico in 1857 as the juicio de amparo. Some writers also inscribed this juicio de amparo was introduced even before 1857, in the state of Yucatán of 31 March 1841. Its first legal consolidation is to be found in the Constitution of the Mexican state Yucatán of 31 March 1841. "The Amparo proceeding is an extraordinary judicial remedy specifically conceived for the protection of constitutional rights against harms or threats inflicted by authorities or

[55] SA's Constitution of 1996, Section 173 Constitution of 1996, Section 167
[56] Constitution of 1996, Section 167(6)(a)(b)
[57] *Id, supra note 49*,p.266
[58] *Ibid.*
[59] *Ibid.*

individuals."[60] It is a Latin American procedural means for constitutional litigation that normally concludes with a judicial order or writ of protection (amparo, proteccion or tutela), that has been indistinctly called an action, recourse or suit of amparo.

This constitutional litigation means was introduced in the American continent during the nineteenth century, and although similar remedies were established in the twentieth century in some European countries, like Austria, Germany, Spain and Switzerland, and also in Canada, it has been adopted by all Latin American countries, except in Cuba, being considered as one of the most distinguishable features of Latin American constitutional law.

For additional comparative emphasis, it is randomly selected some three Latin American States; these are Mexico, Venezuela and Peru.

2.3.1. The Mexican Experience

In Mexico, Amparo has subsequently been expanded to include a far wider range of contexts. For example, amparo is now in criminal, tax, administrative, labor, and civil cases which includes commercial matters.[61] Amparo recourse has its unique features. There are four fundamental characteristics. "The First, amparo is an autonomous legal proceeding. That is an independent legal proceeding possessing its own body of law."[62]The *Second*, amparo guarantees the protection of rights enumerated in the Federal Constitution against all classes of authorities. Amparo is unenforceable against private citizens. This distinction confuses some lay persons. For instance, amparo can act as a type of habeas corpus in criminal cases or a restraining order against the authorities. As a result, "many lay persons consider amparo a tangible piece of paper that will protect them from the authorities. The statement 'I have my amparo in my pocket and I cannot be arrested' is misnomer. This is not amparo, but rather a certified copy of an injunctive order to stop or prevent the authorities from arresting individuals."[63] The *third* characteristics of amparo is only federal courts, can hear amparo proceeding.[64] Article 103 of the Mexican Constitution provides that "the district courts, the circuit courts and the Supreme Court of Justice of the Nation" shall take cognizance of all controversies arising out of laws and acts of authorities which shall infringe upon any personal guarantees.[65] "Depending on the circumstances, amparo can be filed either in the district or in the circuit courts. In district court amparo is applied to challenge a specific procedure rather than to challenge a final judgment. In circuit court, amparo is used to contest final judgments entered on the merits of the case. The *final* amparo characteristic is only complainant or aggrieved party receives the benefit of the court decision granting amparo."[66] This is called the *Otero Formula* that judgment pronounced in amparo proceedings only to the petitioner or complainant who filed the amparo petition to that specific case.

[60] *Id, supra note 1*,p.73
[61] Carlos Loperena Ruiz- The Process of Amparo in Commercial Matters, US-MEXICO Law Journal, Vol.6, Spring 1998, at p.43
[62] *Ibid, supra note 60*, p.43
[63] *Ibid*.
[64] *Id, supra note 60*,p.44
[65] Mexico's Constitution of 1917 with Amendments through 2007, Article 103
[66] *Ibid, supra note 60*,p.44

"Amparo is a combination of procedural instruments, each with a specific protective function. There are five distinct functions: protecting individual guarantees, determining the constitutionality of laws, contesting judicial decisions, petitioning against official administrative acts and resolutions, and protecting social rights of farmers."[67] For more emphasis, it is important to see the procedural interaction of the two selected above functions these are the constitutionality of laws and contesting judicial decisions.

A, -*The constitutionality of laws*- this challenge is specifically called amparo against law.[68] "The procedure for amparo may be attained in either of two ways. ***First***, the unconstitutionality of the law may be attacked in an adversary proceeding with a state official as the opposing party to the compliant. The constitutional challenge is first brought in Federal District Court. Once the district court enters an amparo judgment, the appeals process known as review may begin. The review is filed before the circuit court. The court will render a judgment based on the review. This judgment is final and unchangeable. The ***second*** method of challenging a law is "recourse". 'This method doesn't directly challenge the constitutionality of the law, but rather the complainant requests that the reviewing court determine whether the lower court's decision was based on unconstitutional law.' A violation of the federal supremacy close will result if the reviewing court determines that the lower court decision was based on unconstitutional law. In other words, all ordinary remedies or appeals must be exhausted before amparo may be used."[69]

B, -*Challenging judicial decisions*- under the Mexican legal tradition, this type of amparo constitutes more than eighty percent of amparo proceedings.[70] The judicial amparo is codified in article 14 of the Mexican Constitution.[71] Amparo may be asserted against judicial and quasi-judicial judgments in criminal, civil, administrative, and labor cases etc.[72]

Generally, the Mexican judicial review system adhered to the historically decentralization model thereafter it was also developing its own unique features. As it was elaborated above, the judicial review of this country can be started in different courts of that land. Depending on the circumstances, amparo can be filed either in the district or in the circuit courts. The district court's decision is not final but can appeal to either the circuit court or the Supreme Court. The other kind of petition is directly filed with the circuit court and becomes a final decision. But the Supreme Court shall review when contradiction appeared upon the decision of the circuit. What is important for the Mexican Supreme Court (*Suprema Corte*) experiences and current reforms concerning the judicial review, Specialized Constitutional Court according to its function; Supreme Court of Justice according to its name. "The Mexican Supreme Court (*Suprema Corte de Justicia*) has been released from its court of cassation duties through constitutional and legal revisions in 1988 and 1995, in order to allow it to focus on

[67] *Ibid.*
[68] *Id, supra note 60*,p.45, *See also* Mexico's Constitution, Article 107(VII)
[69] *Ibid, See also* Mexico's Constitution, Article 133
[70] *Ibid.*
[71] Mexico's Constitution, Article 14
[72] *Ibid.*

constitutional jurisdiction."[73] As a result the Suprema Corte of Mexico is now a specialized constitutional court, notwithstanding its traditional name.[74] At the same time, other courts are involved in constitutional questions both by the general diffuse judicial review and by amparo proceedings.[75] Mexico had been taken some reforms; some of them are the following. Mexico adjusted the disadvantage of the *inter partes-effect* by introducing the abstract judicial review competence of the Supreme Court in 1994. This reform fixed-up the gap for which it was known as Otero Formula the amparo effected only inter parties, by introducing the general declaration of unconstitutionality of an amparo. This means that the later declaration constituted an *erga omnes effects*.

2.3.2. The Venezuela's Experiences

In Venezuela, constitutional right for amparo is protected within a mixed system of judicial review since 1961. In addition to the Amparo proceeding, it is one of which they established a popular complaint procedure by granting every citizen the right to request an abstract judicial review even if they are not personally concerned by the legislation.[76] As far as the Constitutional Complaints is concerned, there are two types of interests, these are, the Individual's and the Public's. What is special for this country is that its mixed system of judicial review. In addition to its diffuse proceedings it also established the specialized kind of centralized constitutional adjudication division arrangement within Supreme Court known as "Constitutional Chamber of the Supreme Tribunal of Justice".[77] Originally, this country was adherent of the decentralized judicial review with diffuse system. Gradually, the country became integrate to the specialized kind of constitutional court in its legal system. Since the mid-20th century numerous Latin American states established specialized constitutional courts (The Venezuela-In 1999).[78] The Venezuelan Constitution establishes a 'constitutional right for amparo' or to be protected by the courts, that according to article 27 of the 1999 Constitution everybody has for the protection of all the rights, freedoms and guarantees enshrined in the constitution and in international treaties, or which, even if not listed in the text, are inherent to the human person.[79] The latter is one of those distinctive features of the Venezuelan protection of human rights i.e. this provision protected upon infringements of individual human rights without the need to be stipulated under its Constitution as well as under International treaties. The sole criterion that it needed to be protected is being a human.

The constitutional right for amparo in Venezuela has protected by its own characteristics. Some of them are explained hereafter. The right to amparo can be exercised through an "autonomous action for amparo" that is generally filed before the first instance courts, with a reestablishing nature, in

[73] *Id, supra note 11, at* p.16
[74] *Ibid.*
[75] *Ibid.*
[76] *Ibid, supra note 11*,p.16
[77] Venez. Amparo Law, Art. 8.
[78] *Id, supra note 11*,p.16
[79] Allan R. Brewer-Carias, THE AMPARO PROCEEDING IN VENEZUELA: CONSTITUTIONAL LITIGATION AND PROCEDURAL PROTECTION OF CONSTITUTIONAL RIGHTS AND GUARANTEES, Spring 2011, Vol. 49, p.163-164

general regarding flagrant, vulgar, direct and immediate constitutional harm to the plaintiffs rights.[80] So, amparo is protected upon the violation of one's rights by public authorities or by private individuals, without distinction. Added to this, the decision of the judge, as a consequence of the exercise of this right to amparo, whether through the preexisting actions or recourses or by means of the autonomous action for amparo, is not limited to being of a precautionary or preliminary nature, but to reestablish the infringed legal situation by deciding on the merits, that is, the constitutionality of the alleged disturbance of the constitutional right.[81] It is obvious that the Venezuelan system of judicial review is a mixed one, "judicial review of legislation can also be exercised by the courts when deciding an action for amparo when, for instance, the alleged violation of the right is based on a statute deemed unconstitutional. If the protection requested is granted by the courts, it must previously declare the statute inapplicable on the grounds of it being unconstitutional. Therefore, in such cases, judicial review of the constitutionality of legislation can also be exercised when an action for amparo of fundamental rights is filed."[82] Finally, in Venezuelan systems of judicial review and of amparo, according to article 336(10) of the 1999 Constitution, an extraordinary review recourse can be filed before the Constitutional Chamber of the Supreme Court against judicial final decisions issued in amparo proceedings, and also by any court when applying the diffuse method of judicial review resolving the inapplicability of statutes because they are considered unconstitutional.[83]

The most distinguishable principles regarding the amparo proceeding is the principle of bilateralism, the need for the existence of a controversy between two or more parties.[84] "Amparo proceeding can only be initiated at a party's request. An action must be brought before a court by a plaintiff as the injured party, against the injuring party or parties, who, as defendants, must be called to the procedure as having caused the harm or the violation to the constitutional rights of the former."[85] Not all constitutional rights are individual; some are collective by nature.[86]

It must be clearly identified that the authority, public officer, person or entity against whom the action is file. In the case of artificial persons, public entities or corporations, the petition must also identify them with precision and if possible, also identify their representatives. Being that the amparo action was originally established to defend constitutional rights from state and authority violations, "the most common and important injuring parties in the amparo proceeding are, of course, the public authorities or public officials when their acts or omissions, whether of legislative, executive or judicial nature, cause the harm or threats."[87] In Venezuela, with some exceptions, is that any authority can be questioned through amparo actions, and that any act, fact or omission of any public authority or entity or public official causing an injury to constitutional rights can be challenged by means of such actions.

[80] *Id, supra note 78,* p.164-165,*See also, According to Article 7 of the Organic Law on Amparo, the competent courts to decide amparo actions are the courts of First Instance with competence on matters related to the constitutional rights or guarantees violated, in the place where the facts, acts or omission occurred.*
[81] *Ibid* p.166
[82] *Ibid.*
[83] *Ibid, See also,* Venezuela (Bolivarian Republic) Constitution of 1999 with Amendments through 2009-Article 336(10)
[84] *Id, supra note 78,*p.166
[85] *Id, supra note 78,*p.167
[86] *Ibid.*
[87] *Id, supra note 78,* p.180

There is no State act that can be excluded from revision by means of amparo. The constitutional amparo action can be filed even against legislative acts included from judicial review.

Regarding executive authorities, the general principle is that the action is admitted against acts, facts or omissions from public entities or bodies conforming to the public administration at all its levels (national, state, municipal), including decentralized, autonomous, independent bodies and including acts issued by the Head of the Executive, that is, the President of the Republic. Contrary to what happens in the majority of Latin American countries, in Venezuela, the amparo action is admitted against judicial acts, except decisions of the Supreme Tribunal of Justice. It is admitted even against previous amparo judicial decisions.

The general rule of admissibility refers to two aspects: first, that the amparo action can only be admissible when there are no other judicial means for granting the constitutional protection;[88] and second, that when the legal order provides for these other judicial means for protection of the right, they are inadequate in order to obtain the immediate protection of the harmed or threatened constitutional rights.[89] In a contrary sense, the amparo action is inadmissible for the protection of a constitutional right if the legal order provides for other actions or proceedings that are adequate for such purpose, guaranteeing immediate protection to the right. The amparo proceeding must always be initiated by a party or parties (the injured or offended party), so that no ex officio amparo proceeding is admissible.[90] An action or recourse is brought before the competent court by a party against another party (the injurer or offender party). The defendant must always be brought to the procedure in order to guarantee his rights of defense and due process. From the amparo proceeding, its final outcome is always a judicial order. Being the amparo as a remedy or as the final court written order (writ) commanding the defendant to do or refrain from doing some specific act, but in addition, it is regulated as a complete proceeding that is specifically designed to protect constitutional rights following an adversary procedure according to the "cases or controversy" requirement.

To sum up, "in Venezuela, since 1961, the constitution has incorporated an express and essential provision regarding the judicial guarantee of constitutional rights, establishing a specific judicial remedy for its protection, called the amparo action or proceeding, having different procedural rules when compared with the general judicial remedies that the legal system provides for the protection of personal or property rights."[91] As with the protection and guarantee of constitutional rights is concerned, Venezuela's Constitutional system evidenced broader protections of human rights. The rights protected by the amparo action are the "constitutional rights," that the following rights included in different forms, *first*, rights expressly declared in the constitution.[92] *Second*, "those rights which are

[88] *Id, supra note 78,* p.173
[89] *Ibid.*
[90] *Id, supra note 78,* p.167
[91] *Id, supra note 78,* p.236
[92] *Id, supra note 78,* p.174

not enumerated in the constitution and are inherent to human being."[93] *Third*, are the rights enumerated in international instruments on human rights ratified by the state, that in Venezuela have constitutional rank being applied with preference in all cases in which they provide more favorable conditions for the enjoyment of the right."[94] Therefore, these rights illustrated above, are to be protected through amparo proceedings of means of constitutional litigation mechanism. In Venezuela, *constitutional right for amparo* is protected within a mixed system of judicial review mechanism. Amparo proceedings is petitioned in ordinary courts as well as in specialized court called Constitutional Chamber of the Supreme Tribunal of Justice. The right to recourse of amparo is also derived from Constitutional and non-Constitutional fundamental human rights provisions.

2.3.3. The Peruvian Experience

In *Peru*, as well as in the Latin American settings, generally, amparo decisions only affect the litigants to an action, not the larger population which is known as the Otero Formula. As discussed above, Otero Formula means simply the amparo resulted only inter partes-effect. Recently, the Latin American countries gradually developing Erga Omnes-effect through General Declaration by modifying a kind of Specialized Constitutional Divisions or Tribunals within their judicial review systems. That is, a mixed type of incorporation a decentralized model with diffused and a specialized mechanism of judicial constitutional review system or such as abstract judicial review of legislation. Originally, derived from the Mexican amparo procedure, amparo in Peru also closely resemble an American injunction that allows individuals to file claims against government officials and private entities for violations of constitutional rights.[95] "One unique feature under the Peruvian system, decisions in amparo cases do not invalidate laws, only their application in certain circumstances."[96] "The potential remedy for such a case is the court's demand that public authorities either perform or cease performing certain acts. Due to the difficulty of amending constitutions, constitutional courts have more input into how minority rights are defined and protected than the legislature does, but also Constitutional courts' decisions on individual rights have important policy implications."[97]

"In Peru, petitioners may bring amparo actions against public officials for the violation of any rights that are enumerated in the Peruvian Constitution, which also specifically describes the amparo process."[98] Amparo proceedings can be derived from two arrangements as with the most Latin American countries experiences of judicio de amparo was evidenced. "First, it emanated from the fundamental human rights that stipulated under the constitution itself. Second, it is obtained from the traditional process of the writ of amparo. Bringing amparo cases to the Tribunal is at almost no cost to

[93] *Ibid.*
[94] *Ibid.*
[95] Lydia Brashear Tiede and Aldo Fernando Ponce, Ruling Against the Executive in Amparo Cases: Evidence from the Peruvian Constitutional Tribunal, Journal of Politics in Latin America 2/2011: 107-140, p.108-109
[96] *Ibid.* p.109, *See also*, Peru's Constitution of 1993 with Amendments through 2009, Title V, Article 200(2)
[97] *Ibid.*
[98] *Ibid.*

individual plaintiffs, as they are only required to pay for some copying costs."[99] The proceeding with minimal court fee shall encourage more individual's access to justice. "Unlike the review of legislation abstractly, all courts in the country can decide amparo actions; however, the Tribunal has the final authority to review such claims after petitioners have exhausted their remedies in all other judicial proceedings."[100] Although the rulings in these cases may typically affect only the litigants to the action, judges in lower courts may look to the Tribunal's decisions for guidance in similar cases before their own courts.[101] Peruvian Constitutional Court is called the ***Tribunal of Constitutional Guarantees (TGC)***, as it was intended to be that it should be protect the basic rights and guarantees of citizens against the violations by authorities.

2.4. Conclusion

To conclude, the rights to be protected through Constitutional Complaints or Amparo Proceedings are obvious, i.e. the main aim is for complete realization of human rights enshrined in the constitution. Most of the time it is natural to find out two models of judicial or constitutional review systems in various law scholastic writings, to which they are known as the Constitutional Court or the Kelsenian model and United States model or the Supreme Court Judicial Review arrangements. Their typical features are found that the former deals with the centralized and the later arranges with the decentralized makeup. While the concrete judicial review associated with Amparo proceedings in Diffuse Judicial Review called the Integrated Constitutional Jurisdiction, and the abstract judicial review that applied with the concentrated judicial called the Specialized Constitutional Jurisdiction.

Indeed, there is also a new kind of concentrated constitutional review or adjudication system to which it is experienced outside of a Constitutional court or exterior to Supreme Court's jurisdiction. The Ethiopian model is something a new experience out of these two above mentioned models. The Ethiopian model, unlike to the above two models that they both give the power to review the constitutional issues is to the *Judiciary*, shall give a power to the House of Federation (H^oF) which is the Upper House to see and decide Constitution Interpretational matters, instead of giving the jurisdiction to the Constitutional Court or to the Supreme Court to review the constitutional issues. The FDRE Constitution also furnished access to justice by Individual's Constitutional Complaints mechanisms via four avenues; thus, the next chapter will deal with the country's legal and practical system.

[99] *Ibid.*
[100] *Id, supra note 94*, p.110
[101] *Ibid, supra note 94*, p.110

Chapter III------ The Focus of this Thesis

3.1. Distinctive Significances of Individuals' Constitutional Complaints System under the Ethiopian Inventive Experiences

3.1.1. Brief History, Background of Constitutional law and the development of Ethiopian Constitutional Review System in General

"Ethiopia has existed as a sovereign and independent state since the Axumite Kingdom."[102] "Ethiopia is also the home of human origin and the cradle of civilization with city states like Yeha, Keskese etc since the 5th century B.C." [103] Nowadays, Ethiopia is a democratic republic with the Constitutional Law supremacy and with multi- diverse nations. For almost a decade, it has been, and is, a "Federal Democratic Republic".[104] As a country of nations, nationalities and peoples, its multi-diversity is expressed by its ethnicities, languages and religions. It is currently a Federated country having 9 States and 2 Federal Cities. Ethiopia's federal system of government composed of nine Regional States: Tigray, Afar, Amhara, Oromia, Somali, Southern Nation Nationalities and Peoples Region (SNNPR), Benishangul - Gumuz, Gambella, and Harari; and two City Administrations council of Dire Dawa and Addis Ababa. According to data presentation of Central Statistics Agency of Ethiopia (CSA) it is a Multilingual and Multiethnic society of around 80 different groups. The present Ethiopian population is estimated from 90 million up to 95 million or above.[105]

Entire its existence as a State until now Ethiopia had four Constitutions. As far as the Constitutional and judicial review is concerned, before enacted the 1931 constitution, the only written Law that Ethiopian history provided was the Fetha Negest (Law of the Kings) and Ser'ata Mangist (Law of the Government). The Fetha Negest stated that the king shall judge in the middle of his people with equality and shall not be partial neither towards himself and other, nor towards his son or his relative in any way which brings about justice.[106] So far Ethiopia's experiences evidenced that there didn't have any written constitution and constitutional review mechanism prior to 1931. The Constitutions are the first Ethiopian Constitution of 1931, the Revised Constitution of 1955, the Derg's Constitution of 1987 and the current FDRE's Constitution of 1995. Both the 1931 and 1955 Constitutions codified the unlimited and inalienable power of the sovereign over Emperor Haile

[102] Assefa Fiseha (Assoc. Profs.) (2016): Constitutional Adjudication through Second Chamber in Ethiopia, Ethnopolitics, p.1
To link to this article: http://dx.doi.org/10.1080/17449057.2016.1254407
[103] Ghebrehiwet Tesfai Baraki, THE PRACTICE OF FISCAL FEDERALISM IN ETHIOPIA:A CRITICAL ASSESSMENT 1991 2012 AN INSTITUTIONAL APPROACH, Doctoral Thesis Presented to the Faculty of Economics and Social Science at the University of Fribourg (Switzerland), Fribourg, Switzerland, April 14, 2015,p.10
[104] Tsegay Regassa, State Constitutions in Federal Ethiopia: A Preliminary Observation, (A summary for the Bellagio Conference, March 22-27, 2004), p.1
[105] CSA: Ethiopian Central Statistics Authority, POPULATION STABILISATION REPORT Ethiopia, March 2014, p.51 Based up on the 2007 Population and Housing Census and the 2012 Inter-Censual Population Survey the Ethiopian Population is projected by Central Statistical Agency (CSA) for the coming years. The Medium variant projection projected the country's total population to be 85.8 million for 2013, 87.9 million for 2014 and 90 million for 2015.
[106] Fetha Negest, Aba Paulos' Translation, at Faculty of Law, Chapter.XLIV,Section IV, p. 273, *See also,* Sileshi Zeyohannes, Constitutional Law II, Sponsored by the Justice and Legal System Research Institute, (2009) p.4

Selassie's, his subjects and included few, if any, human rights protections.[107] The transitional period charter of 1991that served as provisional constitution and incorporated some human rights provisions on it.

Precisely, during 1931 Ethiopia was a country with new experience of having a Written Constitution. For drafting the Constitution the 1898 Meiji Constitution of Japan was taken as a model.[108] As far as the judicial and constitutional reviews are concerned, the concepts didn't well know, organized and practiced since 1931. At the apex of the court system there was the Emperor's Chilot, where cases could be reviewed by the monarch in person when necessary.[109] Hence, it could be hard to find out the concept of judicial and constitutional review mechanisms even in the Constitution of 1931. When it is mentioned about Constitutional Adjudication/Review mechanism of Ethiopian past experiences, it has to be notable that this doesn't meant an intention of discussion about Judicial Review in general.

The 1987 Derg's Constitution was also arranged in line with the Socialist ideology. "Upon assuming control, the Derg immediately suspended the revised 1955 Constitution and systematically eradicated all dissent."[110] The Derg established and enacted the Constitution of the People's Democratic Republic of Ethiopia (PDRE) in 1987.[111] The 1987 Derg's Constitution provided that it is supreme law of the land and any law or decision contrary to the Constitution has no effect.[112] The constitution established the National Shengo as the supreme organ by having legislation as its primary function.[113] The Shengo was then shall have a power to establish the Standing and Ad-hoc commissions to meet its purposes.[114] By virtue of Articles 81 and 82 (1) (b) the Shengo organized a Council of State as a standing commission that it had the power to interpret the constitution and other laws.[115] The president of the standing commission was also the president of the Country according to Article 81 (3) of the same constitution.[116] At the end of the day, the Derg regime tried to restructure situations that couldn't able it to secure its existence from brought about the demise on May 28, 1991, by an adoption of a nominal constitution. The Derg's authorities that was contrary to their behavior, however, it could be seen that it was a new experience of constitutional adjudication arrangement that the constitution of 1987 furnished to the country.

The Federal Democratic Republic of Ethiopia (FDRE's) Constitution is the pertinent (core) instrument of this thesis that will be focused on. Although from its processes of drafting and adoption, the present Constitution created controversies among some political entities upon inclusiveness and participatory

[107] Chi Mgbako; Sarah Braasch; Aron Degol; Melisa Morgan; Felice Segura; Teramed Tezera; 2008 Fordham University School of Law; SILENCING THE ETHIOPIAN COURTS: NON-JUDICIAL CONSTITUTIONAL REVIEW AND ITS IMPACT ON HUMAN RIGHTS; Report Issue on Nineteenth Annual Philip D. Reed Memorial,p.2
[108] FASIL NAHUM, Constitution for a Nation of Nations: The Ethiopian prospect (1997). The Red Sea Press, Inc. p. 23, *See also*, Getahun Kassa, MECHANISMS OF CONSTITUTIONAL CONTROL: A PRELIMINARY OBSERVATION OF THE ETHIOPIAN SYSTEM, AfrikaFocus,Vol.20,Nr.1-2,2007,pp.75-104, p.77
[109] Aberra Jembere, An Introduction To The Legal History Of Ethiopia 1434-1974, (The Netherlands,2000), p.169
[110] *Id*, *Supra note 106*, p.2
[111] *Ibid.*
[112] The Constitution of Peoples Democratic Republic of Ethiopia (1987),Proc.No.1989,Article 118
[113] *Id*, PDRE Constitution, Article 62
[114] *Id*, PDRE Constitution, Articles 70 & 81
[115] *Id*, PDRE Constitution, Articles 81& 82 (1) (b)
[116] *Id*, PDRE Constitution, Article 81 (3)

progression, it is generally believed that Constitutional review is an important tool to ensure the realization of human rights.[117] It is also vital that the said Constitution shall be required full incorporation of the bill of rights in its consolidation. Historically, some 27 political actors, the dominant being the Ethiopian Peoples' Revolutionary Democratic Front (EPRDF) established a transitional government (1991– 1994) of Ethiopia (TGE) and introduced a federal constitution in 1995 that established nine regional states and two autonomous cities.[118] Even if the initiation was a new experience to the then Ethiopian political arena, the openness of the process had impact on the legitimacy of the product, the creation of the constitution and the institutions created.[119] Having The FDRE Constitution at hand, its very essential side is that to build democratic system, to govern by rule of law, and establishing and restructuring the democratic constitutionalism and institutions of human rights. The1995 constitution incorporated fundamental rights and freedoms broadly recognized in a number of international human rights instruments that estimated one third of the entire provisions promoted.[120] Importantly and relevantly the 1995 Constitution enshrined the very crucial fundamental rights and freedoms under its Chapter Three Articles 13-44[121] that is, it protects Group's and Individual's human rights, moreover, it is also incorporated very distinctive institutional arrangements with regard to constitutional adjudication system according to its Chapter Six, Part Two Article 62 and Chapter Nine Articles 83 and 84.[122] Thus, this could be supposed as a good commencement to a country for which its whole era had expressed with endless civil wars, turmoil and chaos. "The twentieth century has brought political turmoil, war, starvation, and stagnated economic development in Ethiopia."[123] On the contrary, with a mere listing bill of rights in the constitution, without institutionalization and without democratization the rights that stipulated in it are assumed to be nothing but a maiden aunt. Some scholars believed the rights and freedoms that are so extensively addressed in the Ethiopian Constitution are not adequately protected because of structural flaws.[124] But, does it? Some also stated that, on one side, the new Ethiopian Constitution provides extensive protection for democracy, individual rights and freedoms.[125] Refuting by simple premise might make it unreasonable. Particularly, the power of the judiciary to interpret the constitution is the most contested area in constitutional law scholarships.[126] The aspire of this thesis doesn't mean to proof or disproof, to rebut or accept and to refute or contest one's arguments, rather it is intended to find out what is looked like the legal framework and the practices actually and plainly at the institutional

[117] Adem Kassie Abebe, The Potential Role of Constitutional Review in the Realization of Human Rights in Ethiopia, Thesis submitted in the Fulfillment of the requirements for the degree-Doctor Legum (LLD)- In the Faculty of Law, University of Pretoria, 26 October 2012, p.32
[118] *Id*, *Supra note 106*, p.2
[119] *Ibid.*
[120] *Id*, *Supra note 107*, p.79
[121] Proclamation No. 1/1995, entered into force as of the 21st day of August, 1995. Cited as the 1995 Constitution of the Federal Democratic Republic of Ethiopia ("FDRE"), Chapter Three Articles 13-44
[122] FDRE Constitution 1995, Chapter Nine- Articles 83,84
[123] T. S. TWIBELL, Ethiopian Constitutional Law: The Structure of the Ethiopian Government and the New Constitution's Ability to Overcome Ethiopia's Problems, Vol. 21:399-1999, p,400
To link to this article: http:// HeinOnline -- 21Lo.L.A.Int'l&Comp.L.J.400 1999 or WWW.abyssinialaw.com
[124] *Ibid.*
[125] *Ibid.*
[126] Yemane Kassa, Dealing with Justiciability: in Defense of Judicial Power in Ethiopia, Mekelle University Law Journal Vol.3 No. 1 (2015), p.43

arrangements of the country. Hence, it is essential to examine and explore the pros and cons of arguments of both sides concerning the writings of the Ethiopian current Constitutional Review system in general sense.

Some scholars such as Adem Kassie believed that one of essential preconditions for the success of constitutional review is the existence of an independent constitutional review system.[127] Constitutional review is an important tool to ensure the realization of human rights.[128] Also he is further stated that the success of constitutional rights litigation requires as a minimum the existences of (1) justiciable rights, (2) an independent constitutional adjudicator, and (3) organized litigants with the resources to engage in repeated and strategic litigation.[129] Accordingly, in addition to these three requirements the entire review system can be influenced by democratic system, rule of law, separation of powers, and good governance. Moreover, it is directly affected by political, legal and cultural context of a given country.

On the other hand, as Getachew Assefa expressed that we see that divergent and isolated positions have been taken for example on the scope of the House of Federation (H^oF) and the role of courts vis-à-vis constitutional interpretation.[130] The author of this thesis is also agreed mainly with the above arguments apart slightly from other perspective. The perspective is obvious, the need for well organized constitutional review system to individuals' direct access with strong structured legally and democratic institution to tackle the violations of human rights infringed by the authorities is a vital to this research. In addition to the organized litigants with the resources to engage in repeated and strategic litigation, it is also highly appreciated in a particular country's system of constitutional review to path the way for the Individuals' Constitutional Complaints legally and practically (institutionally). The corridor is preferred to be well organized institutionally and legally to avert the violations of human rights through the constitutional adjudication system arranged in the country. The mechanisms of constitutional review as well as constitutional complaints system differ from State to State in this world. Their difference mainly comes from the legal tradition the particular State adhered with (whether it is the follower of the Civil Law tradition 'continental' or the Common Law practiced country), the judicial review or constitutional review system is experienced, and the entire political atmosphere of that country exercised shall be also mattered. It is believed that under chapter II of this paper, it could be obtained and had some highlights about the different kinds of constitutional review systems and jurisdictions of their application of Individuals' Constitutional Complaints (Abbreviated as ICC) and Amparo Proceedings experiences of some *selected* countries. Actually, it is vital base on the above mentioned other countries' experiences, to see and discuss on comparative analysis the Ethiopian recent Constitutional Adjudication system and specifically to focus on the Individuals' Constitutional Complaints arrangements.

[127] *Id*, *Supra note 116*, p.71
[128] *Id*, *Supra note 116*, p.32
[129] *Id*, *Supra note 116*, p.33
[130] Getachew Assefa, All About Words: Discovering the Intention of the Makers of the Ethiopian Constitution on the Scope and Meaning of Constitutional Interpretation. (p.139-169), Journal of Ethiopian law, vol. 24, no.2 (2010), p.139

3.2. The Law: Ethiopian Legal Frameworks towards the ICC

In accordance with Article 9 (1) of the Constitution, the FDRE Constitution is the supreme law of the land.[131] Any law, customary practice or a decision of an organ of state or a public official which contravenes this Constitution shall be of no effect. And sub Article 4 of this provision also clearly expressed that all international agreements ratified by Ethiopia are an integral part of the law of the land. This provision confirmed that the supremacy of the constitution and all international agreements ratified are an integral part of Ethiopia is clear that it doesn't left a room for complexity or further interpretation. Accordingly, what is the status of international agreements that ratified by Ethiopia, first and foremost, has to be answered.

a. Constitution versus International Agreements

The constitutional provision article 9(1) is clearly affirmed that the supreme law of the land shall be the Constitution. Then, what makes the integral part of the law of Ethiopia? This shows that the international agreements that ratified by Ethiopia is then under the status next to the constitution. As its name is concerned, different designations are used to refer to international agreements. They are referred to as pacts, protocols, covenants, conventions, charters, treaties, etc. Article 27 of the Vienna Convention on the Law of Treaties asserts the supremacy of international treaty law over national laws.[132] However, by virtue of Article 9(1) of the FDRE Constitution only the Constitution is the supreme law of the land.[133] Under the FDRE Constitution, treaties do not constitute the supreme law of the land as it used to be the case under the 1955 Revised Constitution of Ethiopia.[134]

Moreover, Article 86(4) of the FDRE Constitution provides that Ethiopia will "observe international agreements which ensure respect to Ethiopia's sovereignty and are not contrary to the interests of its people."[135] Accordingly, Ethiopia is in a position to disregard the treaties that it deems contrary to its own national interest regardless that it might have ratified those instruments.[136] Treaties do not have the normative legal rank or value like that of the FDRE Constitution.[137] This shows that international agreements considered as subordinate position next to the constitution under the Ethiopian legal regime. Thus, to solve conflicts between laws countries followed some approaches, "These ordinary rules of interpretation include lex posterior derogate lege priori and lex specialis derogate lex generalis.

[131] FDRE Constitution 1995, Article 9(1)
[132] Yonas Birmeta, Human Rights Law Teaching Material Prepared for Oromia In-service Program, (Unpublished and Undated) p.181
[133] *Id*, *Supra note 131*, p.183, See also, FDRE Constitution 1995, Chapter three- Article 9(1)
[134] *Ibid.*
[135] *Ibid*, FDRE Constitution 1995, Article 86(4)
[136] *Ibid*, *Supra note 131*, p.183
[137] *Ibid.*

Ethiopia being one of the countries which accords equal status to international agreements it ratified with that of proclamations." [138]

Consequently, Ethiopia has two interpretational options with regard to the international agreement that ratified by the House of Representatives' but having been contradictory nature with one of the proclamations that adopted by it. First, is obvious that this must be resolved through the application of ordinary rules of interpretation including *lex posterior derogate lege priori* and *lex specialis derogate lex generalis*. Second, the conflict can be resolved by inquiring whether or not the treaty in question is contrary to the national interest of the country in line with Article 86(2) of the FDRE Constitution.[139] According to this provision, international agreements ratified by Ethiopia must serve the purpose of promoting Ethiopia's interest. Based on article 86(4) also to observe international agreements which ensure respect for Ethiopia's and are not contrary to the interests of its Peoples.[140] Therefore, Ethiopian negotiation and signing of international agreements depends on the purpose of promoting and respecting of the interest and the sovereignty of the country.

On the other side, there are some scholars that they argued the status of the international agreements must be derived from Article 13(2) and it reads as, the fundamental rights and freedoms specified in this Chapter shall be interpreted in a manner conforming to the principles of the Universal Declaration of Human Rights, International Covenants on Human Rights and International instruments adopted by Ethiopia. It would appear that the Constitution takes precedence over any ratified international human rights instruments; however, Article 13(2) of the Constitution includes a provision, which arguably places certain international human rights instruments on par with the Constitution.[141]

b. The need for publication of Ratified International Agreements

Some countries need publication to incorporate the international human rights conventions with their domestic laws; others may not need the said publication process to integrate international treaties with their laws. The current Ethiopian constitutional experiences didn't show a clear indication for the requirement of publication with regard to incorporation of the ratified international agreements. The requirement of publication ratified international agreements by itself brings about to two different aspects. Some scholars argue that the mere fact of ratification of the international human rights instrument by the House of People's Representatives is sufficient to render the instrument effective.[142] Their argument supported by Article 9(4) of the FDRE Constitution.[143] "They argue the absence of publication does not undermine the validity of the ratified instrument."[144]

[138] *Id, Supra note, 131*, p.184 , See also, Ibrahim Idris, The Place of International Conventions in the 1994 Federal Democratic Republic of Ethiopia (FDRE) Constitution, Journal of Ethiopian Law, vol.20, 2000, p. 132
[139] FDRE Constitution 1995, Article 86(2)
[140] FDRE Constitution 1995, Article 86(4)
[141] Kevin J. Fandl, The Role of Informal Legal Institutions in Economic Development, Fordham International Law Journal, Volume 32, Issue1, (2008) Article1, Chi Mgbako, Sarah Braasch, Aron Degol, Melisa Morgan, FeliceSegura, Teramed Tezera, (pp. 259-297), REPORT,SILENCING THE ETHIOPIAN COURTS: NON-JUDICIAL CONSTITUTIONAL REVIEWAND ITS IMPACT ON HUMAN RIGHTS, p.271
[142] *Ibid. Supra note 131*, p.187
[143] FDRE Constitution, Article 9(4) states that all international agreements ratified by Ethiopia are an integral part of the law of the land.
[144] *Ibid, Supra note 131*, p.187

Others argued that publication of the international agreement is a requirement for such agreement to have legal effect.[145] "The proponents of this view invoke Article 71(2) of the FDRE Constitution which requires that the President of the Republic to proclaim in the Negarit Gazetta laws and international conventions ratified by the House of Peoples' Representatives." [146] "Moreover, proponents of the second position also contend on the basis of Article 2(3) of the No.3/1995 Federal Negarit Gazeta Establishment Proclamation which indicates that publication of federal laws including ratified international agreements is an absolute requirement for taking judicial notice."[147]

c. Laws Regarding the Implementation of ICC

Deductively from the above legal arrangements it is reasonable to infer from or base on the current Federal Constitution and Proclamations in relation to the Ethiopian ICC system. The FDRE Constitution didn't clearly indicate about the ICC yet to mention about the Constitutional Review, rather, as it is taken as tantamount to the later, it stated specifically about Constitutional Interpretation in general manner. Thus, the FDRE is clear as to whose power it shall be; all constitutional disputes shall be decided by the Second Chamber i.e. the House of the Federation (HoF), up on investigation and recommendation by the Council of Constitutional Inquiry (CCI). Moreover, unlike the other States experiences indicated and discussed under Chapter II of this thesis, the Ethiopian ICC procedures are directly emanated from the Proclamations of No. 251/2001,[148] the repealed No. 250/2001[149] and No.798/2013[150] respectively. The Council of Constitutional Inquiry (it will be mentioned as CCI hereafter) and thereby it was established by the FDRE Constitution Article 82(1).[151] Additionally, the FDRE Constitution Article 82(2) and the following expressed as to how the members have to be appointed and worked within CCI as an institution. Its powers and functions also discussed under the FDRE Constitution Article 84 and the ff (and the following articles).

Proclamation No. 251/2001, may be cited as, the "Consolidation of the House of the Federation and Definition of its Powers and Responsibilities Proclamation No. 251/2001." This Proclamation is included very important definitions, principles and procedures as to how to be implementing the powers and functions of the House of Federation, particularly, to its Constitutional Interpretation or adjudication proceedings vested on it. This Proclamation essentially defines law. By virtue of Article 2(2) of the Proclamation, "Law" shall mean Proclamations issued by the Federal or State legislative organs, and regulations and directives issued by the Federal and States government institutions and it

[145] *Ibid.*
[146] *Ibid, see also,* Article 71(2) of the FDRE Constitution
[147] *Ibid, see also,* Proclamation No.3/1995 Federal Negarit Gazeta Establishment Proclamation, Article 2(3)
[148] PROCLAMATION No. 251/200 1, A PROCLAMATION TO CONSOLIDATE THE HOUSE OF THE FEDERATION OF THE FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA AND TO DEFINE ITS POWERS AND RESPONSIBILITIES, This proclamation shall enter into force as of the 6th day of July, 2001
[149] PROCLAMATION NO.250/2001, COUNCIL OF CONSTITUTIONAL INQUIRY PROCLAMATION, This Proclamation shall enter into force as of the 6th day of July, 2001.
[150] PROCLAMATION No. 798/2013, A PROCLAMATION TO RE-ENACT FOR THE STRENGTHENING AND SPECIFYING THE POWERS AND DUTIES OF THE COUNCIL OF CONSTITUTIONAL INQUIRY OF THE FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA, This Proclamation shall enter into force upon the' date of publication in the Federal Negarit Gazette, Done at Addis Ababa, this 30th day of August, 2013.
[151] FDRE Constitution Article 82(1), it stated that The Council of Constitutional Inquiry is established by this Constitution.

shall also include international agreements that have been ratified by Ethiopia.[152] The other very crucial point that this Proclamation enshrined is as a principle the constitution has in conformity with the International Human Rights instruments when necessary. Article 7(2) clearly stated that where the Constitutional case submitted to the House pertains to the fundamental rights and freedoms enshrined in the Constitution, the interpretation shall be made in a manner conforming to the principles of the Universal Declaration of Human Rights, International Covenants on Human Rights, and International instruments adopted by Ethiopia.[153] This might help for further reconciliation for us to those who might be argued or decided on the contrary.

The remaining but the very vital Law is the Proclamation No. 798/2013, cited as the "Council of Constitutional Inquiry Proclamation No.798/2013", because this proclamation incorporates the focal points of this thesis. When the Constitutional Interpretation needed by the Individual Parties, then the corridor and procedure is found here with in the ambit of this Proclamation. The repealed Proclamation No. 250/2001 shall not be entirely excluded hereby to examine it from comparative angle, since it was working until recently.

In addition to the Article 84 (1) (2) of the FDRE Constitution,[154] the "Council of Constitutional Inquiry Proclamation No.798/2013" on its provisions intended to mention repeatedly the phrase of "Interested Party". When we look at this constitutional provision article 84 thoroughly, we can infer there are four methods of approaching or considering of cases of Constitutional dispute that may need for interpretation. These are by the House of Federation, by the States Legislatives or Executives, by the Courts and by the "Interested Party". Therefore, we can simply attain to a conclusion that based on article 84 (2) of the same constitution, there is a room for any interested party (Individual (s)) to submit its discontented with regard to unconstitutionality of any law whether it is federal or regional. The said article clearly stipulates as where any Federal or State law is contested as being unconstitutional and such a dispute is submitted to it by any court or interested party, the Council shall consider the matter and submit it to the House of the Federation for a final decision.[155] As stipulated in the rules of procedure of the Council and the Council of Constitutional Inquiry proclamation, the Council may receive cases from the House of Federation, state legislative and executive organs and from any court or *interested party*.[156]

It is obvious that modern constitutions structured to achieve the minimal state (requirement) and that is a State which leaves greater space to individual freedom and activities. Constitutions are about preventing abuses of powers, but are also about more positive things too. Even if the focal point of this thesis is concerning to the Individuals' access to Constitutional Complaint in the sphere of Constitutional Adjudication system of Ethiopia, it is also valuable to elaborate the procedural matters in this regard. Derived from the FDRE constitution itself, the procedure is clear and precise. In

[152] PROCLAMATION No. 251/200 1, Article 2(2)
[153] *Id*, Article 7(2)
[154] FDRE Constitution Article 84 (1) (2)
[155] *Ibid*, FDRE Constitution Article 84 (1) (2)
[156] *Id*, *Supra note 131*, p.83-84

accordance with article 84 (3) When issues of constitutional interpretation arise in the courts, the Council shall:-

a. "Remand the case to the concerned court if it finds there is no need for constitutional interpretation; the interested party, if dissatisfied with the decision of the Council, may appeal to the House of the Federation.
b. Submit its recommendations to the House of the Federation for a final decision if it believes there is a need for constitutional interpretation."[157]

This procedure permitted to the interested party may submit issues of Constitutional Interpretation on pending trial stage or this is known as the "Incidenter".

The phrase 'interested party' appeared to be a wide ranged meaning. This means that, it could be the court, the prosecutor, or individuals, or any other interested body like NGOs or Associations or Human Rights Institutions i.e. whether it could be a plaintiff or a defendant in the civil disputes or an accused in criminal matters my initiate a Constitutional Interpretation required issues. The constitutional dispute or the matter of constitutional interpretation is a constitutional issue- whether that relates to constitutional provision, or a conflict between the constitution and any other law or a decision- to which there are two or more equally persuasive sides or viewpoints.[158] So far so good, the mentioning of submitting of cases regarding a claim for Constitutional Interpretation by interested party tantamount to present a case for interpretation by Individuals' Constitutional Complaints.

Proclamation No. 798/2013, article 3 (1) on its procedural principles stated that when the unconstitutionality of any law or customary practice or decision of government organ or decision of government official is submitted in *writing* to the Council, it shall consider the matter. Should the Council, upon consideration of the matter, find it necessary to interpret the Constitution, it shall submit its recommendation thereon to the House of the Federation.[159] Hence, this article made it clear that the unconstitutionality issues are referred to any law, decision of the government organ or government official even it broadened to customary practice.

But on the contrary, there are arguments delivered by scholars. For these supportive arguments should be inferred from the Assefa Fiseha's writing and gave analyses by Getachew Assefa in comparison the powers of the HoF and CCI with the power of the Courts. A. Fiseha's main arguments focused on the power of Constitutional Interpretation that is given to the HoF and CCI by the Constitution is confined or limited to the laws to which they are only enacted by the Federal Legislative (HoPR) and State Councils. As with in the Getachew Assefa's writing is clearly discussed, the A. Fiseha's key arguments based on two different Constitutional angles although the Constitution itself is clear with the power of Constitutional Interpretation given to the HoF and CCI. Thus, his first argument is found on Constitutional Articles of 84 (2) and 13(1) of the FDRE's.[160] According to him, since the Amharic

[157] FDRE Constitution Article 84 (3)
[158] *Id, Supra note 129*, p.140
[159] Proclamation No. 798/2013, Article 3 (1)
[160] FDRE Constitution Articles 84 (2) and 13 (1)

version of Article 84 (2) as opposed to the English version which could be controvertible to each other, that it stated "በፌዴራሉ መንግስትም ሆነ በክልል ህግ አውጪ አካላት የሚወጡ ሕጎች" (which most approximately means 'laws enacted by Federal as well as State law making bodies') 'makes it clear that the term law refers to laws enacted either by the HoPR or state legislative bodies [and therefore nothing more]', a citizen can be challenge the constitutionality of all laws other than proclamations of HoPR and State Councils before ordinary courts.[161] Consequently, his argument asserted that, 'the review of constitutionality of regulations, directives, decrees, orders, notices and the like will be the competence of the ordinary courts.'[162]

The other angle of A. Fiseha's argument is emanated from the Article 13 (1) of the FDRE Constitution that it stated as all Federal and State legislative, executive and judicial organs at all levels shall have the responsibility and duty to respect and enforce the provisions of this Chapter i.e. Chapter Three of the Constitution, makes it mandatory that the courts engage in the interpretation of the scope and limitation of the rights in the third chapter in order to live up to its duty to 'respect and enforce' the Constitution.[163] Deriving from the above two arguments of A. Fiseha's, it is clear that any further action shall be in conformity with the principles and provisions of the FDRE Constitution. His arguments are also intended to achieve the intention of the Constitution is in light of the intention of the framers that doesn't inconsistent or unsuited with the Proclamations of -250 and 251 of the 2001-. As he clearly expressed, the two proclamations enacted in 2001 are incompatible with the Constitution.[164]

Analogously, the author of this thesis also believes that the succeeding of Proclamation No. 250/2001 and the current Proclamation No. 798/2013 is also repeating the same extension if not worse. Thus, Article 3 (1) of Pro. No. 798/2013 tried to broadening and strengthening the scope and meaning of the law that shall be adjudicated by the HoF and CCI respectively. According to Article 3 (1) of the current CCI proclamation is stipulated "when the unconstitutionality of any law or customary practice or decision of government organ or decision of government official is submitted in writing to the Council, it shall consider the matter. Should the Council, upon consideration of the matter, find it necessary to interpret the Constitution, it shall submit its recommendation thereon to the House of the Federation." For more clarification, by virtue of Proclamation No. 251/2001 Article 2(2), "Law" shall mean Proclamations issued by the Federal or State legislative organs, and regulations and directives issued by the Federal and States government institutions and it shall also include international agreements that have been ratified by Ethiopia. Together with Article 3 (1) of Proclamation No. 798/2013, as stated above, granting overwhelming power on the reason of Constitutional Interpretation to HoF and CCI that didn't evidenced by the Constitutional provisions thereby it is considered to be inconsistent with the FDRE Constitution. This incompatibility creates some gaps and overlaps with

[161] *Id, Supra note 129,* p.143
[162] *Ibid.*
[163] *Ibid.*
[164] *Id, Supra note 129,* p.144

regard to accepted principles of internationally and constitutionally even with the accepted common experiences of others. Some of the consequences or inconsistencies are the following.

3.2.1. Some Legal Arguments on the Constitutional Review System of Ethiopia

a. Principle of Separation of Powers

This principle is a very important element to the Federalism and Decentralism kind of State structure. Ethiopia is a Federal state with decentralized arrangements. In accordance with Article 50 (1) of the FDRE Constitution, the Federal Democratic Republic of Ethiopia comprises the Federal Government and the State members.[165] Also its sub 2 included that the Federal Government and the States shall have legislative, executive and judicial powers.[166] Thus, its division of powers found vertically as well as horizontally. When we look at the powers and functions of some of its governmental organs such as the HoF and the Judiciary establish merged. "Federalism and Separation of Powers are interlocking elements in a thoroughgoing philosophy of the division of power."[167] Under the Ethiopian institutional arrangement the Council of Constitutional Inquiry (CCI) comprises of 11 members with which the Federal Court's president and vice president are the leader components from the judiciary and the other three elements of CCI are from the House of federation that is the legislative in context. Therefore this seems to be contradictory with four concepts of the Separation of Powers. The idea of separation of powers eventually developed into a norm comprising the following four basic precepts or principles: First, the principle of *trias politica*, requiring a formal distinction to be made between three independent branches of state authority, namely the legislative, executive and judicial branches; second, the principle of the separation of personnel according to which the same people should not be allowed to serve more than one branch of government at one time; third, the principle of the separation of functions between the three branches of state authority to avoid one interfering with or assuming functions vested by law in another branch or state organ; and finally, the principle of checks and balances that requires each organ be entrusted with special powers designed to serve as checks on the exercise of functions by the others in order to come to equilibrium.[168] This implied that the above developed principles of Separation of Powers the Ethiopian arrangement or the Constitutional Adjudication mechanism furnishes a novel or unique kind of organization. It simply contradicts with the 'Pure Doctrine' of Separation of Powers. Instead, it guarantees institutionalizing mechanisms or arrangements than structuring with the principles of separation of powers and checks and balances the governmental three organs with each other. The HoF by itself is a legislature body and the Council of Constitutional Inquiry comprises of two influential personalities from the judiciary i.e. the president and vice president of the federal Supreme Court, so it found fused together here.

[165] FDRE Constitution Article 50 (1)
[166] *Ibid.*
[167] Andre Mbata B. Mangu, Separation of powers, independence of the Judiciary and good governance in African Union Member States, College of Law, Department of Constitutional, Public and International Law, University of South Africa and Faculte de Droit, Universite de Kinshasa, p.3
[168] *Ibid. Supra note 166*

b. *Principle of Judicial Independence*

The independence of the judiciary means that it should not be subordinated to the authority of any other branch of government, but only subject to the Constitution and the law. The most fundamental aspect of the separation of powers is that there should be a separation between the judiciary and the other two 'political' branches of government.[169] It should be impartial and perform its functions without fear or bias.[170] This does not mean that the executive is not involved in the appointment of the members of the judiciary or that the judges are not accountable.[171] In every country, judges are appointed by the head of state based on recommendation by the judges themselves as members of an independent judicial commission or in the case of the Ethiopian counterpart, Federal Judicial Administration Council (FJAC) or State Judicial Administration Council. Hence, with the institutional arrangements of the House of Federation (H^oF) and the Council of Constitutional Inquiry (CCI) how could it be said the Judiciary is independent branch of the government, because its recommendation is to be reviewed by another branch of the government i.e. by the HoF. This is not only because of the inherent power of judicial review is removed from the judiciary and the Adjudication on Constitutional matters is given to the House of Federation, but also the judicial independence required to be checked and balanced by the legislative organ that through normal circumstance is the Upper House's accountability. As a principle a body which is empowered to interpret the fundamental law of the land should be independent and free from any kind of political influence.[172]

c. *Principle of good governance*

Generally, the concept of Good Governance is so broad and included very significant elements on it. "Good governance" implies or requires transparency, equity, justice, promotion of and respect for human rights, whether civil, political, economic, social and cultural, promotion of the rule of law, decentralization, sound economic policies, open, free and fair elections, and popular participation.[173] This concept of good governance is so broad to expound, it could be found in every institutional democratic arrangements. Hence, it could be clearly seen that it could affect the combination institutional mechanism of the (H^oF) with (CCI). The Individual Constitutional Complaint may first approach or submit its infringements of basic human rights to one of the Courts of law, then up on exhaustion the issue of the Constitutional Interpretation matter shall Complain to CCI in order to consider by mere writing application. This means that the Individual Complaint has a duty to appeal to the appellate court having jurisdiction. The appellate court shall then decide on the mere bases of the issues of Constitutionality or Unconstitutionality of the said case. If the court appellate decided on matter by saying that there is an issue of Unconstitutionality, then what will be the remedy. The Constitutional provisions don't clearly indicate for such matters. What the Constitution said is that

[169] *Id*, *Supra note 166*, p.5
[170] *Ibid.*
[171] *Ibid.*
[172] *Id*, *Supra note 140*, p.284-285
[173] *Id*, *Supra note 166*, p.8

clear on this regards, Article 62 (1) stated that the House has the power to interpret the Constitution. The Courts' power or role on constitutional interpretation is a vague by itself. The Exhaustion designated that the Individual's Complaint of the vested interest of the basic case has to get first the final decision of the respected courts or administrative organs, and then it shall submit its complaint to CCI according to Article 2 (10) of the Proclamation No. 798/2013. The definition of Exhaustion is visibly expressed here under this provision, it stated that "final decision" means a decision that has been exhausted and against which no appeal lies. If on the other hand, the issue on constitutional interpretation is contested on pending trial and referral by the court having it or by interest party, then the procedure is clear that is the CCI may order the case to be pending on the court. The Individual Complaints have an option that if the court denies their complaint of violations of fundamental human rights on pending trial, then the infringements of Individual's human rights will be continued on progression until the case get exhaustion or it brings final decision of the subject matter.

Furthermore, denying a role to interpret and review the constitution to judiciary might meet with the Adem Kassie's critics of his dissertation on Doctoral paper. He argued that the role of Ethiopian courts in the constitutional review system is limited to referring cases that raise constitutional issues to the Council. Ethiopian courts are excluded from invalidating unconstitutional government actions or inactions. It is rather the HoF that exercises the power of constitutional review.[174] It could be found that the equivalent arguments from scholars such as Assefa Fiseha and Getahun Kassa. Assefa believes the two proclamations enacted in 2001 are incompatible with the constitution. [175]Assefa stated that the two laws "indirectly strip the jurisdiction of the regular judiciary".[176] Getahun also stipulated that with the introduction of this unique arrangement of constitutional adjudication the judiciary in Ethiopia is left aside from having a direct power on constitutional interpretation.[177] Moreover, this argument strengthening by stated the Dr Fasil Nahum's reflection as: "...Thus the ultimate interpreter of the constitution is made, not the highest court of law, but the House of Federation".[178] The other is the Ebrahim Edris's article which evidenced the above side of critics expressed that under the FDRE constitution the courts are denied both the power of interpreting the constitutional provisions and handling judicial review of legislative statutes, [179] and so on.

There are also some scholars who argued slightly on the contrary. One of those scholars is Leonard F.M. Besselink his argument is supported by the reason that the judiciary doesn't completely disregarded from interpreting the constitution. He tried to justify his position by the provisions in Articles 9 (2), 79 (1) and 13 (1) of the Constitution which together vest judicial power in the courts, and impose on all organs of state, along with others, the duty to respect, to enforce, to ensure the observance of, and to obey the Constitution. As regards the power of the courts to interpret the text of

[174] *Id*, *Supra note 116*, p.23
[175] *Id*, *Supra note 129*, p.144, the two proclamations are Proc. No. 250/2001 and Proc. No. 251/2001.
[176] *Id*, *Supra note 129*, p.144, at footnote 9
[177] Getahun Kassa, MECHANISMS OF CONSTITUTIONAL CONTROL: A PRELIMINARY OBSERVATION OF THE ETHIOPIAN SYSTEM, AfrikaFocus,Vol.20,Nr.1-2,2007,pp.75-104, p.80
[178] *Ibid*, *Supra note 176*, p.80-81, See also, FASIL NAHUM (1997), *Supra note 38*, p. 59
[179] *Ibid*, *Supra note 129*, p.144

the Constitution, he seems to conclude that in relation to non-rights parts of the Constitution the courts should be assumed to have the power to apply the Constitution whenever the meaning of the Constitution is beyond doubt and doesn't require "interpretation" or because of the obviousness of the case or because it was previously settled by CCI /HoF.[180]

Deducting from the above arguments, the standing of the author of this thesis is obvious and both. Precisely, not only the institutional arrangements of the HoF and CCI are affected the inherent power of judiciary that tantamount to the violation of the Good Governance of the separation of powers of the governmental organs as expected to be, but also the rules and procedures emanating from the Constitutional provisions and the Laws such as the Proclamations No. 251/ 2001 and No. 798/2013 respectively creating ambiguity and redundancy as to which the power of the judiciary to interpret the text of the Constitution is left to the courts is unclear thereafter the Individuals Constitutional Complaints rights to get access to justice on time is seemingly ignored. Thus, the latter produces another progressive violation of human rights until the case gets exhaustion, identical to lack of Good Governance to which they are interrelated each other. But our country's experiences indicated that if the court finds such Unconstitutionality at pending trial, the court's power in this regard is then a Referral one to the CCI to consider it. Up on consideration of the Unconstitutionality of the issue referred by the CCI, there are two options remained, whether the issue shall be submitted to the HoF with recommendation for final decision or remand (return back) the case to the concerned court, then optioned to appeal.

d. Principle of Counter – majoritarian versus majoritarian

This part might, proper to discuss based on the two distinct and interrelated each other principles. To start first, with ***Counter – majoritarian*** principle of the judicial review or constitutional review a power given to the judiciary is inherent that the supporters of this argument are based. The concept of judicial supremacy in the construction of the constitution is not a settled debate even in the country where the role of the courts as the ultimate interpreter seems to have greatest acceptance.[181] Hence, the concept of counter-majoritarian difficulties at the outset was developed or coined the phrase, by Alexander Bickel in 1962, serves as shorthand for the problem of reconciling judicial review with popular governance in a democratic society.[182] He further defined the concept was as the root difficulty is that judicial review is a counter-majoritarian force in our system[183] (This means that the system of USA's). The problem is this: to the extent that democracy entails responsiveness to popular will, how to explain a branch of government whose members are unaccountable to the people, yet have the power to overturn popular decisions?[184] Is this the same interpretation with the rationale of "Framers

[180] *Id*, *Supra note 129*, p.146
[181] Gustavo Femandes de Andrad, ESSAY on COMPARATIVE CONSTITUTIONAL LAW: JUDICIAL REVIEW, JOURNAL OF CONSTITUTIONAL LAW, [Vol. 3:3May 2001], p. 988
[182] BARRY FRIEDMAN, THE IHSTORY OF THE COUNTERMAJORITARIAN DIFFICULTY, PART ONE: THE ROAD TO JUDICIAL SUPREMACY, NEW YORK UNIVERSITY LAW REVIEW, VOLUME-73, MAY 1998, NUMBER 2 [Vol. 73:333 May 1998](Pp.333-343) p.334-335
[183] *Id*, *Supra note 181*, at footnote 2, p.335
[184] *Ibid*, *Supra note 181*, p.335

Intention" in our case to which the drafters of the constitution or the Constitution Commission of FDRE was based on and vision 'to tackle Counter-majoritarian' difficulties might be happening for the future, at the time of drafting and ratification process?

Before answering of this question, it is appropriate to see first the other side of arguments of scholars in correlation to the rationale behind the FDRE Constitution was found on the so called Framers Intention. Yonatan Tesfaye was one of the scholars who criticized on his series writings in this regard, the current Ethiopian Constitutional Adjudication mechanism that the FDRE Constitution gave power to the legislative i.e. to the House of federation. He deliberately quoted the then justification of the Constitutional Commission in the following manner. As the drafters debated during the drafting and ratification of the constitution, then extracted from the minutes; "the problem is this: to the extent that democracy entails responsiveness to popular will, how to explain a branch of government whose members are unaccountable to the people, yet have the power to overturn popular decisions? How can a constitution that has been ratified by the people's assembly are allowed to be changed by professionals who have not been elected by the people. To allow the Courts to do the interpretation is to invite subversion of the democratization process. Since the Constitution is eventually a political contract of peoples, nations and nationalities, it would be inappropriate to subject it to the interpretation of judges. It is the direct representatives of the contracting parties that should do the work of interpreting the constitution".[185] The above argumentation inferred from Yonatan's scrutinized and from a phenomenon logical point of view, that he supported his argument, the framers intention was suitable with the concept of Alexander Bickel's justification of the Counter-Majoritarian difficulties that the root difficulty is that judicial review is a counter-majoritarian force in USA' system of constitutional review mechanism through the Supreme Court's review mechanism. But what is fundamental based on Yonatan's emphasis is that the FDRE system of Constitutional Adjudication didn't respond to what is intended to be, because of the nature and features of the HoF i.e. by giving a Constitutional Interpretation power to the majoritarian the House of Federation and taking away the inherent power of judicial review from Courts. Thus, he argued that the drafters, by taking the Constitution away courts and entrusting it to the House, haven't successfully avoided the counter-majoritarian problem.[186] He tried to support his critics based on two different angles. These are derived from the electoral system that the House of Federation was elected according to Article 61 (2) of the FDRE Constitution. As his critic's is concerned, this electoral principle will create two main problems by itself that the constitution was intended to avert the counter- majoritarian difficulties. Problems are :- a) Ethnic groups with a larger population have more votes than the others. b) In accordance with Article 61 (2) the State Councils may themselves elect representatives to the House of the Federation, or they may hold elections to have the representatives elected by the people directly. His concern was with the first statement it stated that representatives of HoF may elect indirectly from the members of

[185] YONATAN TESFAYE FESSHA, JUDICIAL REVIEW AND DEMOCRACY:A NORMATIVE DISCOURSE ON THE (NOVEL) ETHIOPIAN APPROACH TO CONSTITUTIONAL REVIEW, 14 Afr. J. Int'l & Comp. L. 53 2006,p.69
To link to this article: http://heinonline.org
[186] *Id, Supra note 184*, p. 70

the State Council by themselves. And he additionally strengthened his critics by expressed that the practice, however, is that the state council, rather than conducting an election to elect representatives, merely appoints individuals to represent the state in the House.[187] He therefore concluded that its attempt to take the constitution away from an "unelected and unaccountable body" is not successfully accomplished as the Constitution has again found itself in the hands of a federal body, which is composed of individuals who are not elected but rather appointed by the state councils.[188]

Deducted from the above discussions the author of this thesis also concluded that the FDRE Constitution arranged to give response to the political burning issues at a time of drafting as well as ratifying the current FDRE Constitution by giving the power of Interpretation of the Constitution to the Upper House (HoF) assumed that this legislative body of the government is the best representative of all ethnic groups even the minorities than that of the judiciary. Hence, the Constitution is considered as the reflection of the 'free will and consent' of the nationalities. "It is, in the words of the framers, 'a political contract' and, therefore, only the authors that are the nationalities should be the ones to be vested with the power of interpreting the constitution." [189] But, standing today and thoroughly stare up to current situations and developments of the country, it seems left a grey area it didn't occur within the intention of the 'Fathers of the Constitution' during the adoption and we faced a challenges today.

e. Principle of Protection of Human Rights (Enforcement)

Most of the legal scholars to which they wrote their critics in accordance with and particularly to the Constitutional Adjudication system of Ethiopia, they shared a reflection in common to their arguments that the contemporary legal and institutional arrangements of the country has its own shortenings. In addition to the above principles, the core arguments that they reflect in common are their fear for the full protection of fundamental human rights and freedoms with which the provisions enshrined under the FDRE Constitution. To start with Adem Kassie's argument in this concern, he puts it in the following manner, his thesis argues that the main reason for the failure of constitutional review system is the fact that the power of constitutional review is granted to the House of Federation, the Upper Chamber of parliament, a political entity that is designed to be part of and work in harmony with other political organs.[190] 'It is submitted that the Ethiopian constitutional review system cannot effectively protect human rights.'[191]

On the other hand, some scholars argue in the contrary that the Constitutional Adjudication system of Ethiopia in its general framework arranged to realize the protection on infringements of fundamental human rights. The current FDRE's system structured Legally and Institutionally in line with the protection of group and individual human rights, with more stressed on the protection of the Group Rights. ***Legally,*** the adoption of the FDRE Constitution incorporates the full version of fundamental rights and freedoms under its Chapter Three from Articles 13-44. To make this realize or protect

[187] *Id*, *Supra note 184*, p. 72
[188] *Id*, *Supra note 184*, p. 72 -73
[189] *Id*, *Supra note 116*, p. 92
[190] *Id*, *Supra note 116*, p. VI
[191] *Ibid.*

violations of these articles mentioned, the Constitution furnished a mechanism of interpretation accordingly. Article 13 (1) of this Constitution stated that all Federal and State legislative, executive and judicial organs at all levels shall have the responsibility and duty to respect and enforce the provisions of this Chapter. All those three branches of the government shall have an obligation to respect and enforce the fundamental rights and freedoms enshrined on it up to the hilt or from the grass root. This means that not only the authorities to abide on the constitutional provisions, but also they have responsibility to comply with and work for based on the constitution. On the realization of these provisions the Article 13 (2) also provided as to how the organs of the government may in consistency with the constitution. It is clearly stated as the fundamental rights and freedoms specified in this Chapter Three that shall be interpreted in a manner conforming to the principles of the Universal Declaration of Human Rights, International Covenants on Human Rights and International instruments adopted by Ethiopia. Thorough observing of the Constitution, particularly, the provisions of Chapter Three concerning the fundamental rights and freedoms that enshrined sufficiently those laws most of which compatible with the instruments of human rights that Ethiopia ratified. So, legally speaking, it could be proper to express that Ethiopia has a modern Constitution which incorporated progressive Human Rights provisions on it.

Institutionally, for realization and protection of the basic rights and freedoms stipulated under the FDRE Constitution, it provided the very vital arrangements to convert violations of Human Rights on process. Some of the institutions that are established by the FDRE Constitution are the House of Federation with CCI, Federal as well as State Courts, Human Rights Commission, Institute of the Ombudsman and so on. Indeed, these mentioned institutions are vital on playing the role to protect and to realize human rights infringements. To stay at point, the HoF with CCI, specially, the other institutions stated above, generally, was arranged to tackle particularly the groups' human rights violations or protections or promotions if any. Institutionally could we say that the contemporary arrangement of the FDRE Constitution for realization and protection of human rights of Individuals' have enough space predominantly the House of Federation with its supportive advisory body of the Council of Constitutional Inquiry, because these institutions, as the author's examinations revealed, didn't properly settle cases of human rights violations or cases of unconstitutionality submitted for interpretation as intended to be. For this a practical example and observation could be mentioned hereafter. So far, the cases filed for Constitutional Interpretation was numbered 2212 at the CCI registrar office by Individuals' Complaints, since this information was taken, however, most of the cases recommended by the CCI and appealed by the parties only 38 was decided. Among those 38 cases, till now there are only 32 cases recommended and decided by the CCI and HoF, respectively. *(This data was taken from interviewees of both registrars and a document Index No.1 &2),* specially**,** an interview excerpted from *Ato Kebebe Tadesse Kebede*, on March 17, 2017.[192] As he expressed "the reason for this is also that, almost all of the cases lodged at the CCI for Constitutional Interpretation by

[192]An Interview addressed by Ato Kebebe Tadesse Kebede Director of Directorate of the Study and Research Affair at the Council of Constitutional Inquiry (CCI), interview was taken on March 17, 2017.

Individual Complaints were rejected based on demerits for the Constitutional Interpretation." The demerits of the cases emanated from whether the issues hasn't been gotten the final decision or hasn't exhausted or the subject matter doesn't fall over the jurisdiction of the HoF or hasn't a vested interest or it doesn't have any relationship with the provisions of the Constitution. Therefore, it might be seen that there were some problems relating to the submitting the cases of Constitutionality or Unconstitutionality merits needing for interpretation to the CCI and HoF, respectively. The other respected personality that I approached was *Ato Weldu Merene*.[193] At the time of interviewing him, he gave me some highlights about the procedural process at the HoF with regard to submitting application thereto. By virtue of his interview, most of the cases lodged at the CCI were rejected due to the reason of demerits. As he stated, one is the lack of awareness about constitutional interpretation understanding by the complainants and the legal practitioners at the field. The other problem is the complainants and the legal practitioners when undertaken the CCI and HoF as a final option next to the Federal Cassation Court. If we see to the cases rejected because of demerits, then their issues were not relevant to the constitutional interpretation, rather they related with the procedural irregularity, error of laws or admissibility of evidences. So, he farther expressed that the problems might be tackled through continual upgrading legally and institutionally of the current structure of the CCI/HoF (Notable that this view is slightly different with the author's). On the other hand, some believed that the problems were with the counseling, consultation and discussion of a professional having well knowledge of about the constitution and the rights enshrined on it. Not only with the dependent on the overall legal knowledge and practices of the Courts, but also the modern *Institutional* arrangement of Constitutional Adjudication of Ethiopia is focused on the group or collective rights instead of giving full realization and protection of individual rights. As discussed and evidenced in the above different argumentations of some scholars, for more realization and full protection of fundamental rights and freedoms of Individuals' the Constitutional Review mechanism should be practiced by the Judiciary or by a Constitutional Court are the dominants.

3.3. Avenues of Individuals' Constitutional Complaints under Ethiopian System

Proclamation No. 798/2013 also furnishes an essential provisions concerning to proceedings of Individuals' Constitutional Complaints (ICC) under the Ethiopian Constitutional Adjudication system. Generally, the ways of issues of Constitutional Interpretation emanated from five distinct areas and may be submitted to CCI. Due to the reason of the focal point of this thesis is mainly on the ICC mechanism of Ethiopia, so it is justifiable to look up only on the four avenues of ICC towards submitting cases of Constitutional Interpretation matters to ICC and HoF respectively, because the fifth way of constitutional interpretation is irrelevant to the access to justice by Individuals' Constitutional Complaints in accordance with Article 3(2) (c) of the Proc. No. 798/2013.

[193] An Interview addressed by Ato Weldu Merene, former Director of Directorate the research and study on the Constitutional Interpretation and Identity Affair at the House of Federation (HoF) and currently Legal Advisor of the Speaker of the HoF , interview was taken on May 19, 2017.

1. The first avenue is found in accordance with article 3 (2) (a) of the same proclamation that stated if it is justiciable matter of court, when it has been brought to, and heard by, the court having jurisdiction. The Ethiopian mechanism of Individuals' Constitutional Complaints here is conceived to appear or realize the path of Individuals' access to Complaints or justice to the vested institutions by the FDRE Constitution. This vested right of access to justice, first and for most, is emanated from the respected Constitutional provision itself. In light of article 37 of the FDRE's Constitution Everyone has the right to bring a *justiciable matter* to, and to obtain a decision or judgment by, a court of law or any other competent body with judicial power. I like the words of the said Constitution specially most of the human rights provisions enshrined on it. One of the provisions that I liked is this, the Right Access to Justice that this article provides the very vital element the mechanism to protect the basic human rights stipulated under the Chapter Three of the Constitution. Hence, the FDRE Constitution express without any vague stipulation that everybody has the right to submit a *justiciable matter* to a court of law or any other competent body with judicial power. But, the later by itself furnishes a question as to who is any other competent body with judicial power. Does this include the Constitutional Adjudication and related institutions or not, so it remains unclear.

Meanwhile, to turn up to the Proc. No. 798/2013 Article 3 (2) (a) and (b) what is *justiciable matter* is clear, even the Amharic version is more understandable than the English version of the stated proclamation. Based on the context of the Amharic version, *justiciable matter* means any constitutional issue initiated when bringing a case to courts or administrative organs then that case must decidable within the jurisdictions of courts or administrative organs.[194] To give more emphasis *Justiciability* deals with the boundaries of law and adjudication.[195] "Its concern is with the question of which issues are susceptible to being the subject of legal norms or of adjudication by a court of law."[196] Here it is notable that when the case is seen and decidable in the court and on pending trial, the court when believed there is a case needed for constitutional interpretation, then the court may send to the CCI for Constitutional Interpretation by its own motion. If the Constitutional Interpretation issue is initiated by either party, then the need for constitutional interpretation shall apply to the court having jurisdiction. The Court up on considering may accept or deny the application. If the Court believes there is an issue needed for constitutional interpretation, then the Court shall refer the issue of constitutional interpretation to the Council according to Article 4 of the same proclamation.[197] Until the Council decides after considering the matter on constitutional interpretation referred to it by court or submitted to it by interested party, it may order the case to be pending at the court (Art.6 of the Proc). On the other side, if the Court denies the application for review the constitutionality of the issue indicated by the interested party, then the procedure in this regard will differ. By virtue of Article 4 (5), where the court rejects the request, the interested party shall submit his case to the Council within 90 days from

[194] Proclamation No. 798/2013 Article 3 (2) (a) and (b)
[195] Ariel L. Bendor, ARE THERE ANY LIMITS TO JUSTICIABILITY? THE JURISPRUDENTIAL AND CONSTITUTIONAL CONTROVERSY IN LIGHT OF THE ISRAELI AND AMERICAN EXPERIENCE (p. 312-377) IND, INT'L & COMP. L. REV, [Vol. 7:2 1997], p.312
[196] *Ibid*, *Supra note 194*, p.312
[197] Proclamation No. 798/2013 Article 4

the date he knows such decision of the court.[198] Which decision? Is it included the entire case or the specific request made by a party? Here it could be found the ambiguity or made a controversy that whether the time limit included upon exhaustion or upon interruption. It is also remarkable to mention that when the Constitutional Interpretation case is to be submitted by the 'Interested Party' to the Council, then it shall limit with the issue necessary for constitutional interpretation. Thus, to turn up to the subject matter, what does here looking for is that the first way for Individual's Constitutional Complaints is found here under this provision.

2. The second avenue for ICC is here paved the way by Article 3(2) (b) that if it is justiciable matter of administrative organ, when a final decision has been rendered by the competent executive organ with due hierarchy to consider it, then it shall or may be submitted to the ICC by the Interested Party.[199] In order to submit the issue of constitutionality to the ICC by the concerned Interested Party the main case must be exhausted. Therefore, the requirement in this regards something different than that the justiciable matter initiated at pending trial of the court. Based on Article 2 (10) "final decision" means a decision that has been exhausted and against which no appeal lies.[200] Individuals can submit their cases before the CCI's jurisdiction after their cases are exhausted or up on the final decision of the administrative organ this means that if the issue is up on the infringement of the administrative action that attached with the case, the violation will be continued until the case get final decision by virtue of the definition of the above said provision.

3. The third avenue for ICC is appeared to be here. In light of Article 5 of the CCI proclamation, 'Interested Party' can submit issues of Constitutional Interpretation outside of Courts.[201] Any person who alleges that his fundamental right and freedom provided under the Constitution have been violated due to the final decision rendered by government organ or official may submit his case to the Council for constitutional interpretation. This way to the constitutional interpretation by ICC seems direct resemblance with subject matter of this thesis and the experiences of the European and Latin American countries to which they are reflected in this thesis Chapter II as comparative perspective. But the Ethiopian system has its unique features that doesn't clearly and plainly stipulated under the Constitutional provisions as with the European and Latin American Constitutions did so. The Ethiopian experience is found to expound in general manner within the Constitution that a need for Constitutional Interpretation only thereby preferred to a further legislation of powers and functions of final adjudicator i.e. the HoF and a councilor i.e. CCI with regard to Constitutional Interpretation issues. This Article 5 (2) of the same proclamation also furnishes a very important point. Issue of constitutional interpretation may be submitted to the Council in accordance with sub-article (1) of this Article, when a final decision has been rendered by government organ having competency to decide on

[198] Proclamation No. 798/2013 Article 4 (5)
[199] Proclamation No. 798/2013 Article 3 (2) (b)
[200] Proclamation No. 798/2013 Article 2 (10)
[201] Proclamation No. 798/2013 Article 5

the claim for violation of right with due hierarchy to consider it.[202] So, the case must be exhausted. The other crucial but ambiguous point provided in this Article 5 (3) is this, where any law issued by federal government or state legislative organs is contested as being unconstitutional, the concerned court or interested party may submit the case to the Council.[203] The initiation place of the contestation is unknown. If it is established on pending trial, then the procedure shall be followed based on the above discussed on the First Avenue of ICC, which is based on articles 3(2) (a) and 4 of the proclamation no. 798/2013. What will be the challenging for unconstitutionality of legislation enacted by Federal or State legislative organs initiated outside of the court? Then, whether to submit it first to the competent body (jurisdiction) for exhaustion or submit it directly to CCI for consideration remains unclear. But the term 'contested' simply indicated that the question of unconstitutionality of a law may be initiated within a court of law.

4. The fourth corridor of accessing to the Constitutional Adjudication process of Ethiopia is forwarded cases of Constitutional interpretation by the House of Federation to the Council of Constitutional Inquiry for further investigation. Comparative translation or analogous of similar experience of other Countries affirmed this kind of practice is known as 'Ex-Officio' proceeding. As it stated under Article 6 of the Proc. No. 251/2001, the House shall forward new cases of Constitutional interpretation, submitted to it directly, to the Council of Constitutional Inquiry.[204] This will happen when one of interested parties submits the case directly to the HoF thereby forwarded or ordered to the CCI for investigation. In fact, the term 'Ex-Officio' requires order (s) by the competent authorities.

To summarize, generally there are five ways of submitting Constitutional Interpretation cases to ICC and HoF. *Inter alia,* the remaining four avenues towards the ICC have consistencies with the objective of this thesis, hence, it will be continued to focus on them only. This means that, the writing is not typically concerned to constitutional interpretation on any *unjusticiable matters* may be submitted to the Council by one-third or more members of the federal or state councils or by federal or state executive organs based on article 3 (2) (c) is not so far considered as Individual's Constitutional Complaints.

3.4. The Practice: Ethiopian Institutional Arrangement towards the ICC

a. The House of Federation

The contemporary Ethiopia is structured as Federal State. "There was a considerable tension between the country's nationalities; and it was this tension that lead Ethiopia's remarkable experiment of

[202] Proclamation No. 798/2013 Article 5 (2) and (1)
[203] Proclamation No. 798/2013 Article 5 (3)
[204] Proclamation No. 251/2001 Article 6

ethnic-federalism as a panacea."[205] In contemporary world federal political systems are increasingly used by states with a multi-ethnic population as a mechanism to accommodate the demands of their ethnic groups as well as to protect their territorial integrity.[206] As a result, Ethiopian federalism has been called 'ethnic federalism', distinguishing it from federalism in a country such as the United States, where regional borders do not delimited based on ethnic ones.[207] This implies that the Ethiopian territory is administratively divided into nine regional states.[208] The cities of Dire-Dawa and Addis Ababa do not belong to one of the nine regional states.[209]At that time the preferential to the 'Ethnic Federalism' was chiefly taken for the reason of accommodation, stability and guaranty to the then fragmented of the continual existence of Ethiopia as a nation. As a result, the 1995 Constitution established the executive, the judiciary and the legislative branches of the government consist of two houses of parliament. Therefore, the aim of this paper doesn't concern with the House of People's Representatives, it has to go through the ambit and powers of the Second Chamber or Upper House i.e. the House of Federation (HoF). Unlike the Lower House (HoPR) that they are elected by means of general and direct elections under the first-past-the-post electoral system. The House of Federation (HoF) is the representative organ of the diverse Ethiopian ethnic groups or of the diversity in the federation,[210]and it is elected through direct or indirect representation, this means that, either by the regional parliaments or within the frame work of direct elections organized by these parliaments. In practice, all members of the House of the Federation are elected by the regional parliaments and, therefore, no direct elections for the House of the Federation taken place. Consequently, the HoF is where by each Nation or Nationality is represented by one representative and one additional representative for each one million of its population, is entrusted with powers that range from determining requests for the exercise of the right to self-determination to constitutional interpretation.[211] The two Houses have also distinctive features in comparison with other Countries' that having the same Federal arrangements. When the Lower House (HoPR) is busy on its legislature power, its Upper House (HoF) is active on exercising on powers that listed under article 62 of the FDRE Constitution that made it distinctive compared with others.

Due to the reason that the issues of Constitutional Complaints are interrelated with the power of the HoF that is the center of attention of this thesis, hence, to start with article 62 (1) of the constitution to which it stated as *the House has the power to interpret the Constitution,* is rationale. This power of interpreting of the constitution can also be found deductively under the Proclamations of No. 251/2001Article 4 (1) and No.798/2013 3 (1), respectively. Article 83 (1) of the same constitution stipulated an essential element that *all constitutional disputes* shall be decided by the House of the

[205] Tsegaye Regassa (2010) Learning to Live with Conflicts: Federalism as a Tool of Conflict Management in Ethiopia:- An Overview. MIZAN LAW REVIEW Vol. 4 No.1, March 2010. p. 53
[206] Christophe Van der Beken (N.D) Federalism and the Accommodation of Ethnic Diversity: The Case of Ethiopia, p.1 https://www.unileipzig.de/~ecas2009/index.php?option=com_docman&task=doc_download&gid=1358&Itemid=24
[207]Christophe Van der Beken (2007) Ethiopia: constitutional Protection of Ethnic Minorities at the regional Level. Africa Focus, Vol. 20, Nr. 1-2, 2007,(pp. 105-151), p. 108
[208] *Id*, *Supra note 206*, p.107
[209] *Ibid*, *Supra note 206*, p.107, *at footnote 2*
[210] *Id*, *Supra note 206*, p.110, See also FDRE Constitution Article 61 (1)
[211] *Id*, *Supra note 176*, p.80, See also FDRE Constitution Article 61 (2)

Federation. It is obvious that this novel feature of the FDRE Constitution is emanated from the rationale behind attached with is the so called "the Framers' Intention". Therefore, the Ethiopian Constitutional Adjudication system known as "Constitutional Interpretation" has lane its way as Non-Judicial constitutional review mechanism or a Constitutional Review adjudication system made by the Political Body.

The framers intention of the FDRE Constitution elaborated based on three scholars in the following manner. To start with Dr Assefa Fisehas' arguments, he discussed as it was gathered from the minutes of the Constitutional Assembly is related to the framers view to which "…The framers thought that the new federal dispensation is the outcome of the 'coming together' of the nationalities. Indeed, it is clearly stipulated in the constitution that the 'nations, nationalities and peoples are sovereign.' The Constitution is considered as the reflection of the 'free will and consent' of the nationalities. It is, in the words of the framers, 'a political contract' and therefore only the authors that are the nationalities should be the ones to be vested with the power of interpreting the constitution. To this effect, the HoF that is composed of the representatives of the various nationalities is expressly granted the power to review the constitutionality of laws and resolve disputes between the federal and state governments".[212]

This intention was also stated in the book written by Dr Fasil Nahum as "The Ethiopian Constitution, on the other hand, in a creative stroke provides for something quite different, emanating from and consistent with the overriding supremacy of the nations, nationalities and peoples whose sovereignty the constitution expresses. Thus, the ultimate interpreter of the constitution is made, not the highest court of law, but the House of Federation".[213]

This rationale was also plainly discussed in the paper of Dr Yonatan Tesfaye, for scrutiny as evidence it is quoted as it is hereafter. "The 'undemocratic nature of the judiciary', according to the drafters of the Constitution, was the main reason why the power of interpreting the Constitution was entrusted to the House rather than to the courts. According to them, the courts should not have the power to interpret a constitution made by the people. This was clearly indicated by the Secretary of the Constitutional Commission when he said the following: How can a constitution that has been ratified by the people's assembly are allowed to be changed by professionals who have not been elected by the people. To allow the Courts to do the interpretation is to invite subversion of the democratization process. Since the Constitution is eventually a political contract of peoples, nations and nationalities, it would be inappropriate to subject it to the interpretation of judges. It is the direct representatives of the contracting parties that should do the work of interpreting the constitution."[214]

These the above reflections and arguments reasoned out as to how the FDRE Constitution was given a power of constitutional interpretation to the House of Federation i.e. to the Upper House of the

[212] *Id*, *Supra note 101*, p.3
[213] *Id*, *Supra note 107*, FASIL NAHUM. p. 59
[214] *Id*, *Supra note 184*, p.69

Parliament. Thus, this rationale of the framers was then creating novel institutions having a Constitutional Adjudication system; these are the House of Federation with the help of Council of Constitutional Inquiry. Furthermore, this institutional arrangement crafted its own distinct nature comparing with other common constitutional review experiences. The HoF is a legislative organ i.e. a political body with a power of constitutional interpretation. The other unique feature of constitutional adjudicating is CCI's composition. The CCI was structured with three different mechanisms composed of 11 members; those two of them are from judiciary and 6 others from legal profession to sum up 8 legal professionals. The remaining 3 are from the House itself, so they came from a political body.

Having this in mind, the House also simplified itself into 13 (Permanent) or Standing and Ad hoc Committees to facilitate the powers vested under article 62 of the FDRE Constitution on it. There are also established the Secretariat Office and the Constitutional Interpretation and Ethnic Identity Affairs Directorate, respectively. The Standing committee on Constitutional Interpretation and Identity Affairs, on behalf of the House receives cases through two ways, directly from CCI with recommendation or from an appeal by Interested Party up on the decision of the CCI. For final decision of the Constitutional Interpretation proceeding is started here. Therefore, the FDRE's current Constitutional Interpretation mechanism arranged by two layered Institutions, these are, the HoF and CCI with unique features that they have composition from Legislative and Judiciary.

Procedurally, the HoF shall meet at least twice annually. As it was discussed in the above, the House shall receive cases of constitutional disputes or issues of constitutional interpretation directly submitted a fresh case from any interested party, a recommended case from the CCI or appealed case up on the decision of the CCI. Article 83 (2) of the FDRE Constitution stated that the HoF within thirty days of receipt, decide a constitutional dispute submitted to it by the Council of Constitutional Inquiry. In practice this didn't happen, because the HoF usually met twice annually and rarely met threes. So, this requirement didn't and couldn't meet. Most of the time the case investigated and recommended by the CCI shall get a privileged champion in order to decide based on its recommendation. This means that most of the cases lodged at the House was decided by virtues of the recommendation by the CCI. This evidenced from the cases was researching and inspection from dead files at the HoF. But, when it was on process of studying of cases, surprisingly, there was cases decided in favor of the Complaint's appeal and in contravening with the CCI's recommendation. Inter alias, one of the case is ***Dr Ashebir W/Giorgis Vs Bonga City Municipality*****.** (Annexed No.3) What was interesting about this case was that at first stage of investigation by the CCI, the case was forwarded to legal professionals for further investigation thereby expected to convey their opinions. As good as their words the Committee conveyed their inspection to the CCI. The issue of unconstitutionality precisely was on the Article 40 of the Constitution the 'right to own privet property'. The Constitutional provision stipulated that in its sub article 1 of 40, every Ethiopian citizen has the right to the ownership of private property. And the question of violation of the Complaint lied on the decision of the Administration that the Bonga City Municipality terminated the Contract entered with Dr Ashebir and thereby it tried to expropriate the 70% constructed building of private hospital. The initiation of this case was then up on the illegal

termination of the contract they entered into and they contested within the Regional Courts as well as Federal Cassation Court. The application was submitted to the Regional Court's and Federal Court's decisions that they held a judgment the Municipality Administration may confiscate the land and building thereto for public use. The Individual Complainant submitted his case to CCI based on the violation of his right in accordance with Article 40/7/ of the Constitution and Article 21 of the Investment Proclamation No 280/2002. At a time, the committees' opinion didn't consider and rejected by the CCI. The CCI passed its decision on demerit that this issue didn't constitute Constitutional Interpretation by majority vote. The significance of the minority vote of the CCI was by virtue of Article 40/7/ of the Constitution to which they asserted that every Ethiopia shall have a right to claim Compensation for it. At the end of the day the case was submitted to the HoF through the avenue of appeal. Surprisingly, the opinion of the legal professionals prevailed over the decision of the CCI, later the House decided based on the merits of the legal professionals' opinion. This occasion is also confirmed by the two Directors from the House of Federation Ato *Muluye Welelaw*[215] *and Ato Kebebe Tadesse* from CCI, respectively. For this emphasis it is attached a memo written and communicated within the HoF's Standing Committee and the Directorate experts, thereby the House held a decision based on the minority vote of the CCI's decision. (Annexed No.3) This recent trend by the House is appreciated.

The other very impressive case that the author faced was ***"Negash Dubale Vs Bole Sub-City Administration and Three others"***. (Annexed No.4) Briefly, the Individual Complaint was submitted to the CCI, claiming that his fundamental right to property was violated, because the federal Cassation Court decision and the preceding decisions of the lower Federal Courts were contradictory with the provision of the FDRE Constitution Article 40 and the following. At the beginning the case was started at the Federal Fist Instance Court with Woreda (Local) Administration and three other persons that the Administration rented them without having vested ownership right and legal authority. On the processes of appeal the Addis Ababa City Administration Employment and Urban Development Bureau joined the case. The Complaint received his house based on the judgment of the federal Supreme Court, and then he opened the execution process to obtain over the actual of his classes that the Administration rented to three other persons. At the middle of the time, the Bureau voided and cancelled the title deed and ownership of the Complaint over the house (literally means discarded or cancellation of the document- በአማርኛ ቀጥታ ትርጉሙ ሰነድ ማምከን). The Federal Supreme Cassation Court held a decision that the Respondent (The Bureau) shall have a vested right according to Article 40(8) as it stated as without prejudice to the right to private property, the government may expropriate private property for public purposes subject to payment in advance of compensation commensurate to the value of the property. The complaint was submitted to the CCI. As a result, the House of Federation held its verdict by virtue of the Recommendation of the CCI and the Individual Complaint's claim that the Complainant shall be Interpret in line with Article 40 of the Constitution with which the

[215]An Interview held with Ato Muluye Welelaw Alemu Director of the directorate of the research and study on the Constitutional Interpretation and Identity Affair, interview was taken on March 14, 2017.

Complaint shall have a right to own private property and the Federal Cassation decision inconsistent with the stated provision, this means that, the cassation decision shall not be applicable based Article 9 (1) of the FDRE Constitution. This implies that a decision of an organ of state or a public official which contravenes this Constitution shall be of no effect.

b. The Council of Constitutional Inquiry (CCI)

The other original institution that the FDRE Constitution gives birth is the Council of Constitutional Inquiry (CCI). The FDRE Constitution Article 82 (1) stated that The Council of Constitutional Inquiry is established by this Constitution.[216] Its sub article (2) also expressed that the Council of Constitutional Inquiry shall have eleven members comprising: the President and vice President from Federal Supreme Court that shall, upon recommendation by the Prime Minister, be appointed by the House of People's Representatives. Six legal experts, appointed by the President of the Republic on recommendation by the House of Peoples' Representatives, who shall have proven professional competence and high moral standing; and three persons designated by the House of the Federation from among its members. The unique aspect of the present system of constitutional adjudication in Ethiopia is demonstrated in the fact that a combined setting of a professional and political approach is formed to handle the task of constitutional adjudication.[217] "A similar pattern is also followed at state level where the Constitutional Interpretation Commission, Council of Nationalities and Council of Constitutional Inquiry are envisaged to be engaged in this matter."[218] But the concern of this thesis shall be and deliberately intact with the Federal's CCI.

At this point, added to the Constitutional provision Article 84, pertaining to the powers and functions of CCI, as repeatedly discussed above, laws such as the Federal Proclamations of No. 251/2001 and No. 798/2013 are mentioning hereafter, respectively. By virtue of Article 5(1) and (2) of Proc. No.251/2001 and Article 3 (1) of the Proc. No.798/2013, up on investigation and consideration the CCI submit the case with recommendations thereon to the House of Federation for final decision or reject the case having saying that the issue doesn't constitute for constitutional interpretation. The rejected case shall have a right to appeal to the HoF. When issues of constitutional interpretation arise in the courts, the Council shall, remand the case to the concerned court if it finds there is no need for constitutional interpretation; or submit its recommendations to the House of the Federation for a final decision if it believes there is a need for constitutional interpretation, according to Article 84 (3) (a) (b). The Constitutional Review mechanism is starting here in a complex and unusual way. First, the members of CCI organized with two or more organs of the government, i.e. at least the Judiciary combined with the Legislative government body. They together investigate and consider then submit the case with recommendations thereon to the House of Federation. Thereafter the House shall have a final say power of interpretation on matters of constitutionality. Does the House has a real power to review the Constitution or does have a nominal power only authenticate the already decided case by

[216] FDRE Constitution Article 82 (1) & (2)
[217] *Id, Supra note 176,* p.81
[218] *Id, Supra note 176,* p.82

the CCI is a question made it a complex one. The further position is that based on the rationale behind of the "Framers Intention" or the "Will of Nations, Nationalities, Peoples" that intrinsic on it, the House might made itself busy on controlling and watch-dog of the Constitution without giving due attention to what it has to be i.e. as a legislature the House remained idle and float. Thus, the HoF has an inherent power to "Checks and Balances" to the enacted Laws by the Lower House (HoPR), executed Laws by the Executive and interpreted Laws by the Judiciary left unexploited.

The other essential point is that the rationale behind of the Framers Intention during the draft of the making of the Constitution, that they had a fear to tackle counter –majoritarian difficulties that is the minority elites might hold or exercise power against democratic majority through judiciary. As a result, they intended to impede the so called 'judicial activism'. The framers thought that the new federal dispensation is the outcome of the 'coming together' of the nationalities.[219] Based on Article 8(1) & (2) all sovereign power reside in the Nations, Nationalities and Peoples of Ethiopia; and this Constitution is an expression of their sovereignty.[220] Hence, in light of this article, the Constitution is considered as the reflection of the 'free will and consent' of the nationalities.[221] The author of this thesis observed that the 'Framers Intention' was based on the good-faith that only the authors that are the nationalities should be the ones to be vested with the power of interpreting the constitution,[222] but on the other side, it seemed that they didn't realized the processes and outcomes of the Constitutional Adjudication proceeding might affect to the protection and fulfillment of the fundamental rights and freedoms when it was exercised by single and dominant political authority, even it might create a misunderstanding with the entire proceeding mechanism.

1. Constitutional Adjudication Process at the CCI (Procedural aspect)

The Council of Constitutional Inquiry has the power to investigate constitutional disputes and to submit recommendations to the House of Federation for final decision should it find interpretation of the constitution necessary.[223] As stipulated in the rules of procedure of the Council and the Council of Constitutional Inquiry proclamation, the Council may receive cases from the House of Federation, state legislative and executive organs and from any court or interested party.[224] To this effect, the Council sits monthly but an extraordinary meeting may also be called.[225]

As of this day the only Laws regarding the facilitation and procedures of the litigants approaching Constitutional Interpretation institutions are Proc. No. 250/2001, Proc. No. 251/2001 and Proc. No. 798/2013, respectively. Currently, Proc. No. 250/2001 is repealed and replaced by Proc. No.798/2013. Under the Proc. No. 798/2013 Articles 7(2), 10(4), 11(4) and 12(3) etc repeatedly expressed that particulars shall be determined by directive to be issued by the Council. But there weren't any directive issued by the Council, not yet. At the time of Interview held with *Ato Kebebe Tadesse Kebede*, on

[219] *Ibid. Supra note 176*, p.82
[220] FDRE Constitution Article 8 (1) & (2)
[221] *Ibid.*
[222] *Ibid.* FDRE Constitution Article 8 (1) & (2
[223] *Id, Supra note 176*, p.83
[224] *Ibid.*
[225] *Id, Supra note 176*, p.84

March 17, 2017, he forwarded that the Office of the CCI has an intention (plan) to prepare draft and enact of procedural and code of conduct manuals in the near future. "The other very vital issue that he conveyed was about merits or demerits of the constitutional interpretation for which the Interested Parties do entail to submit here at the CCI were most of the times irrelevant or demerit with the general intention of the FDRE Constitution or the Principles enshrined on it. Because of these reasons most of the cases submitted to it were rejected."[226] So, it is compulsory to refer particularly to these two laws mentioned above as a procedural means, thereby Interested Parties' practices evidenced that, for instance, adhered to submit their Constitutional Complaints based on Cassation's Appeal Format. For this scrutiny a proof is annexed a sample application written by one Individual Complaint. (Annexed No 1) Although the Proc. No. 798/2013 is clearly declared that "the interested party in submitting his case to the Council shall limit with the issue necessary for constitutional interpretation", almost all of the complaints were appeared by many pages. The application for the Complaint shall be in written form in accordance with Article 3(1) of the Proc. No. 798/2013. Constitutional Complaints obliged to submit their constitutional issues only in writing manner. They shall have the sole way of approaching the CCI through written application method, so they shall have a duty to reflect their case in detailed means. There doesn't space to present in personal and deliver their Constitutional infringement issues orally, because the CCI shall hear cases in closed trial. But there is an exceptional case in this regard; Article 10(4) of Proc. No. 798/2013 is enshrined that the Council may hear cases in a public transparent manner. In practice the CCI shouldn't held a single case in public transparent approach since then. This is the one Constitutional Interpretation proceeding that the entire procedure adhered the country something unique from other experiences of such as practitioners of Constitutional Courts or other mechanisms of the Supreme Court Review or other competent Concentrated Tribunals with which they held the Constitution Review proceedings were in public and in open court.

The other very important incorporation in this proclamation is about charge fee. Not only in this proclamation Article 14 stipulated free of any service fees, but also it can be found that the same stipulation under Proc. No. 251/2001 Article 17(1). It stated that Application for constitutional interpretation submitted to the House shall be exempt, from a service charge. Comparing to other counterparts like the South African Constitutional Court, the Ethiopian Constitutional Adjudicating institutional mechanism went farther in this regard.

Under the CCI, the decision proceeding shall be met the minimum requirement of two-third (2/3) of the eleven (11) members in order to constitute quorum. Based on Article 11(2) of Proc. No. 798/2013, the decision or recommendation of the Council shall be passed by a majority vote. Accordingly, Article 11(3) is also, in case of a tie, the Chairperson shall have a casting vote. Moreover, Article 23 of the same proclamation stipulated that the Council shall hold regular meeting on monthly basis, but also the Chairperson of the Council may call meeting of the Council within shorter period as necessary. Although the practice shows that the CCI could meet within shorter time to review the merits and

[226] *Ibid An Interview above, at Supra note 191*

demerits of the constitutional interpretation of the case submitted to it and to submit its recommendation thereon or to pass its decision up on rejection, most of the cases received was rejected based on demerits of constitutional interpretation which was many of the cases lodged didn't constitute constitutional interpretation or it didn't have an issue of constitutionality or unconstitutionality as the case may be. This Constitutional Review mechanism is emerged at the confinement of the CCI. The CCI has a power of investigation; even it can further examine evidences and may assign professionals or committees for deep inspection.

The periods for submission is also specified in accordance with Article 4 (5) of the Proclamation No. 798/2013, where the court rejects the request, the interested party shall submit his case to the Council within 90 days from the date he knows such decision of the court. In another case there doesn't exist any indication of time limits as to when the applicant could submit its cases to the CCI or appeal to HoF respectively, for instance, when the cases are initiated based on the decisions of the administrative, as Article 3 (2) (b) expressed as if it is justiciable matter of administrative organ, when a final decision has been rendered by the competent executive organ with due hierarchy to consider it. The practice shows analogously with respect to Article 4 (5) of the same proclamation. On the other hand, the decisions and recommendations by the CCI haven't known as to when the Council shall make it clear to the concerned parties. That is, the time limit within which the Council notifies its decision to the applicant or submits its recommendation to the House of the Federation doesn't reveal. Pursuant to Article 12 (3) of the CCI proclamation said that it is left to be determined by directive to be issued by the Council. The expected directive didn't yet issue. The FDRE Constitution also provided for under Article 83 (2), the House of Federation shall, within thirty days of receipt, decide a constitutional dispute submitted to it by the Council of Constitutional Inquiry. It shall be found that this Constitutional provision is once more confirmed under Article 13 (2) of the Proc. No. 251/2001. But the practice didn't evidence this trend.

More importantly, the CCI might be received cases from Courts through referral proceeding or from the House of Federation a new case forwarded to which it is apart from directly accessed by the Individual Complaints that is the issue of this thesis. Fortunately, most of the cases lodged to the CCI are by the Individuals' Constitutional Complaints. As it was repeatedly mentioned in the above discussions, the CCI's mandate is obvious, whether to decide when it finds the case hasn't an issue of a need for constitutional interpretation or to submit with recommendation to the HoF for final decision. Thus, the parties shall have one more chance to appeal to the HoF based on there is no need for constitutional interpretation decision rendered by the CCI. The case within the confinement of the CCI, could be entertained by the Sub-Inquiry Committee shall compose at least three members including its chairperson who are assigned by the Council from among its permanent serving members.[227] Any interested party may submit cases to the ICC or directly to the HoF, but the latter then forwarded to the CCI for investigation. Any interested party could be a person of natural or juridical pertinent to Article 2 (9) of the CCI proclamation. Interested party could also present its cases in person or be represented

[227] Proclamation No. 798/2013 Article 25 (1) & (2)

by legal representative or any other interested parties such as the Ombudsman, Human Rights Commission, NGO's or Political Parties without discrimination with regard to Article 7 (2) of this proclamation. "This provision could even open the possibility for extended standing to initiate cases for constitutional adjudication by a number of actors which could among others include Human Rights NGOs, political parties, moreover, could include the Human Rights Commission and the Office of the Ombudsman."[228] The living example of this is the "***Kedija Beshir case"*** that seems to be the reason why the Ethiopian Women Lawyers Association for instance has instituted a case on behalf of a woman who had contested adjudication of an inheritance case by a religious court against her consent as unconstitutional.[229]The other very fundamental about this case is that the Individual Constitutional Complaint is known as **'**Kedija Beshir's' case in practice. This practice also showed that not only this case declared the emergence of accessibility of Constitutional Complaint by Individuals, but also the commencement of capability of legal representatives in this sphere.

The House of Federation up on receiving the cases from CCI i.e. the recommended issue of constitutional interpretation or appealed by the parties i.e. based on the rejected decision held by the CCI, shall render a final decision. Here the process is emerged through the proceeding of the Permanent Committee of the Constitutional Interpretation of the HoF. The HoF is partitioned itself within 13 Standing (permanent) Committees. Hence, the relevant Committee is therefore, the Standing Committee of the Constitutional Interpretation and Identity Affairs was located along with the Secretariat of the House of the federation. Within the Secretariat there were also prearranged Directorates. One of the Directorates is the Constitutional Interpretation and Identity Affairs research and study Directorate. This Directorate organized by a Director, Legal Experts and other Supportive Stuffs. It has its own registrar office to receive cases and to provide important information to the parties about their cases. Cases of constitutional interpretation, whether it is appealed on the decision of the CCI or recommended by the CCI, firstly, it is submitted to the registrar office. The Director considered the merits based on the constitutionality or unconstitutionality of the cases submitted. Therefore forward the cases to the Standing Committee for further examination and final decision. The House of Federation shall be met twice on annual session. Thereby, the House gives its final verdict on constitutionality or unconstitutionality of interpretation. When the author of this thesis approached the Directorate, there were on process to hire a registrar. Fortunately, the author discussed more important issues with the Directorate Director *Ato Mulye Welelaw*, issues such as the procedural practices at the House at the moment of interviewing.[230] And grasped very important points as to how the practical process of cases of constitutional interpretation seized at the registrar office of the Directorate, the Standing Committee and thereby forwarded to the House of Federation for final decision up on the Recommended by the CCI or the Appealed by the Interested Party. At this point, the author was also experienced the cases were decided within six months long.

[228] *Id, Supra note 176,* p.86
[229] *Id, Supra note 176,* p.86 & 91
[230] *Ibid An Interview above, at Supra note 214*

2. Methods of Constitutional Interpretation of Ethiopia

Deriving from the Constitution itself, by virtue of Article 9 (1), any law, customary practice or a decision of an organ of state or a public official which *contravenes* this Constitution shall be of no effect (supremacy remedy). To put it this way, any law, decision or practice which contradictory to the provisions of the Constitution is void or Unconstitutional. It is notable that the mere interpretation of unconstitutionality of any law, decision or practice starts from this general provision. This provision also provided the constitutional (primary) remedy i.e. it declares of no effect. But what makes it unconstitutional or what the issue needed to be an interpretation by itself demands an explanation or a parameter. The sub Article 4 of Article 9 of the Constitution provided that all international agreements ratified by Ethiopia are an integral part of the law of the land. Together with Article 13 (2) of the FDRE Constitution, as it clearly expresses that the fundamental rights and freedoms specified in the Chapter III shall be interpreted in a manner conforming to the *principles* of the Universal Declaration of Human Rights, International Covenants on Human Rights and international instruments adopted by Ethiopia. The other essential part of interpretation that can be found under Article 81 (1) of this Constitution as it stated that all constitutional *disputes* shall be decided by the House of the Federation. Thus, the need for constitutional interpretation may emanate from inconsistency of any law, decision or practice and the disputed issue of unconstitutionality. The other legislation which guarantees or broadening the constitutional interpretation method is Proc. No. 251/2001. Under this proclamation of Article 7 (1) enshrined that the House shall identify and implement principles of Constitutional interpretation which it believes help to examine and decide Constitutional cases submitted to it (as secondary remedies such as declarations, compensation, damage, interdictions and any available remedies). Sub article of this provision also provided that where the Constitutional case submitted to the House pertains to the fundamental rights and freedoms enshrined in the Constitution, the interpretation shall be made in a manner conforming to the principles of the Universal Declaration of Human Rights, International Covenants on Human Rights and International instruments adopted by Ethiopia. Moreover, the CCI as well as the House may, before it passes a final decision on constitutional interpretations, call up on pertinent institutions, professionals, and contending parties to give their opinions.

The declaration of the unconstitutionality of a given decision shall have a general nature which means an ***Erga-Omnes*** effect. Article 11 (1) of the Proc. No. 251/2001 specifies that the final decision of the House on constitutional interpretation shall have general effect which therefore shall have applicability on similar constitutional matters that may arise in the future. On the other hand, the unconstitutionality of a law shall be another story. The declaration of the unconstitutionality of the law remains intact only with that very law. Thereby the effect shall have no ***inter -partes effect,*** but will have ***Erga-Omnes*** effect. To this evidence, Article 12 of similar proclamation identified that if part of a given law is decided that it is unconstitutional unless otherwise found necessary, the effect of the final decision shall remain limited only to that very law.

The practices of CCI and HoF indicated that there are Principles of Interpretation applying and developing in process. But, it is also notable that there wasn't existed such an Interpretational Principles compiled or adopted on its own ever since now. The principles at the CCI or at the House of Federation were implementing the interpretation devises that most of the times are the following:-

a. Usually the members of the CCI or the Permanent Committee of the House, as much as possible, tried to comply with the so called "the Framers' Intention" or originality. The framers intention is popular and obvious that it could be reflected in the FDRE Constitution Article 8, it stated that all sovereign power resides in the Nations, Nationalities and Peoples of Ethiopia. This Constitution is an expression of their sovereignty. Their sovereignty shall be expressed through their representatives. This implies that their sovereignty shall be expressed through their representatives i.e. through the HoF. Thereby the HoF among other things shall have a power of interpretation of the constitution.

b. The second but also very important method of interpretation that the CCI and the HoF was enforcing by virtue of Article 9 of the FDRE Constitution that the Constitution is the supreme law of the land. Any law, customary practice or a decision of an organ of state or a public official which contravenes this Constitution shall be of no effect. And all international agreements ratified by Ethiopia are an integral part of the law of the land. Based on this constitutional provision the CCI and the HoF was pertaining their constitutional interpretation, not only to apply the constitutional provisions as it is, but also they can refer the ratified international agreements and even Protocols. So, the latter gave them a broadened scope of application.

c. The third is also crucial one, the CCI or the HoF was intentionally concerned to interpret cases of violations of fundamental human rights submitted to them. Their base in this case is in fact Article 13 of the same Constitution. According to Article 13 stipulated that the fundamental rights and freedoms specified in this Chapter shall be interpreted in a manner conforming to the principles of the Universal Declaration of Human Rights (UDHR), International Covenants on Human Rights and international instruments adopted by Ethiopia. Thus, this provision made the process of interpretation simple, since on their work to interpret the issues of infringements of basic human rights they shall have to apply the principles enshrined on the international human rights instruments in addition to the above mentioned and others like Treaties and Protocols.

d. The other experience the CCI and the HoF was practicing that they were call up institutions, legal experts (professionals), authorities and contesting parties before passing a decision. Not only they requested opinions but also examined persons and evidences when they aware of their appropriateness based on Article 10 of the Proc. No. 251/2001 and 9 of the Proc. No. 798/2013, respectively. These professionals as well as institutions opinions are very essential data in order to grasp further information about the new facts or laws. Hence, this kind of examination then helps to the intended target of the CCI to formulate the sound Recommendation or Decision; the same also shall apply to the House of Federation on implementing its process to give decision based on the constitutional merits.

"The CCI on the process of its investigation and recommendation thereto, it didn't adopt and didn't develop interpretational principles, not yet."[231] This fact is also confirmed by Ato *Dessalegn Weyissa*, Head of the Office of the Council of Constitutional Inquiry at the moment of an interview held on March 17, 2017. Meanwhile, as he said so, the Office of the CCI is on process to draft and adopt the implementing principles of constitutional interpretation in the near future.[232]

Helping for this, it is thoroughly selected cases of recommended by the CCI and decided by the HoF. The cases are all in all submitted or appealed by the Individuals' Constitutional Complaints for which it is deliberately considered to realize the requirements of the objective of this thesis. Generally, the purpose of this writing is comparatively to discuss and convey a good practice of others, particularly, to research the Ethiopian legal and practical institutional Constitutional Review mechanism in line with the Individuals' Constitutional Complaints system. The selection is done based on their subject matters, initial jurisdictions, interesting issues and admissibility grounds. As much as possible, the subject matter of the cases will not be repeated. Thus, it is discussed some selected cases in accordance with their relevancies. Moreover, those cases revealed and referred to research purposes were only the dead files. Files of pending weren't available for references, so the author was duty-bound to refer only the *res-judicata* or adjudicated cases (dead files).

c. The Courts

The inherent independent judiciary power of the Courts derived from the constitution itself. Pursuant to Article 78 (1) of the FDRE constitution an independent judiciary is established by this Constitution. By virtue of Article 79(1) of the same constitution is also expressed that Judicial Powers, both at Federal and State levels, are vested in the courts. But for the mere reason of the "framers intention" the vested power of the judicial review with regard to constitutional interpretation matters is unusual that to disregard from the judiciary or a competent higher than judicial e.g. Constitutional Court. For this evidence, it is helpful to refer to some scholars approach in this concern. Yonatan Tesfaye described as courts are expected to enforce the provisions of chapter three of the constitution only to the extent that it doesn't engage them in interpretation.[233] Similar implication can be found that within the Getahun Kassas' writing. He argued that however, the matter requires thinking beyond that, as it is impossible to draw a clear demarcation in their scope of competence.[234] Courts cannot avoid consideration of the constitution in disposing cases that come to their attention and no sufficient guidance to that effect is developed.[235]

Apart from the Constitutional Adjudication power that the Constitution gave to the HoF, there is no any indication as to how can challenge the inherent power of judicial power vested on the courts is

[231] An Interview addressed by Ato Desalegn Weyissa, Head of the Office of the Council of Constitutional Inquiry, Interview was taken on March 17, 2017.
[232] *Ibid An Interview above, at Supra note 230*
[233] YONATAN TESFAYE FESSHA, WHOSE POWER IS IT ANYWAY: THE COURTS AND CONSTITUTIONAL INTERPRETATION IN ETHIOPIA, p.140-141.
[234] *Id, Supra note 176*, p. 99
[235] *Ibid.*

unclear. The only evidence that the Courts may exercise its natural power of judicial review was found under Article 84 (3) of the Constitution called Referral, as it stated that when issues of constitutional interpretation arise in the courts, the Council shall have two options. Whether to remand the case based on when it finds there is no need for constitutional Interpretation or submit its recommendations to the House of the Federation for a final decision if it believes there is a need for constitutional interpretation. On the process of this research at the CCI the cases lodged at the Council, the interviews held with legal professionals at the CCI office and furthermore a written article by Getahun Kassa in this area were revealed the fact that almost all files was filed or initiated by individuals there was almost non referred cases by courts to the CCI. Even if the Getahun's paper was written since 2007 i.e. before 10 years, he tried to mention the role of the courts was weak in this regard. When an interview was held with *Ato Kebebe* on March 17, 2017 at the CCI Office; he therefore, revealed that there was almost none cases were referred by the Courts.[236] So, the author of this thesis is also referred these evidences and believed the situation and practice confirmed that the courts weren't interested on referring to the Council by itself raised a question 'Why'? This situation also confirmed by *W/t Gebeyanesh Abebe,* who is a registrar at the CCI, on March 14, 2017 when the interview was hosted with. "She further expressed that among 2212 cases currently filed at the CCI registrar; almost all cases were submitted by the Interested Parties that is by Individual Complaints."[237] In light of the interviews were brought that the cases submitted to and recommended by the CCI and then decided by the HoF, had reached 32 files. This by itself has its own implication, entire its existence the House only gave its verdict on Constitutionality or Unconstitutionality of Interpretation was 38 cases, hence these are very few. (Annexed No. 1)

Getahun's argument was clearly expressed in his writing, as: "Then cases being handled by the judiciary can reach the Council of Constitutional Inquiry on referral by the courts or when filed by an interested party. So far, only a couple of cases have been referred to the Council of Constitutional Inquiry by the courts. These are cases referred by the North Gonder Woreda Court and the Federal First Instance Court. Else the courts seem inclined to entertain cases that are brought to their attention and are within their competence. In the absence of clear reason, courts tend to avoid blanket referral of all claims of constitutionality or constitutional interpretation to the Council of Constitutional Inquiry".

Thus, the above inspections evidenced that the inclination of inactive on referral cases or issues of unconstitutionalities by the Courts whether the issues are contested or uncontested the tendency is continuing.

The other law is FDRE's Proclamation No.25/ 1996 Federal Courts' Proclamation Article 3 (1) provided that Federal Courts shall have jurisdiction over: cases arising under the Constitution, Federal Laws and International Treaties.[238] What does this mean? This provision seems to be contradictory

[236] *Ibid An Interview above, at Supra note 214*
[237] An Interview addressed by W/ro Gebeyanesh Abebe, the Registrar of the Council of Constitutional Inquiry (CCI), and interview was taken on March 17, 2017.
[238] FDRE Proclamation No.25/ 1996 Federal Courts' Proclamation, come into force as of the 15th day of February,1996, Article 3 (1)

with the Constitution or a mere stipulation that it is without purpose. If the Federal Courts have jurisdiction over cases arising under the Constitution, this implies that the Federal Courts shall have a power to see and decide on the Constitutionality or Unconstitutionality of the filed case. Hence, the Courts may have the power to review the constitutionality of a given issue, what will be the effect? To exercise a power of interpretation the constitutional dispute that the courts didn't vested by the FDRE Constitution. This may creates a contradiction with the Constitution that it gives the Constitutional Interpretation power to the sole organ called the House of Federation. Added to that, the passive tendency of the courts on referral of cases to CCI might be emanated from this inherently derived power of judicial review by its peril without having a clear jurisdiction of interpret the constitution. In the absence of clear reason, courts tend to avoid blanket referral of all claims of constitutionality or constitutional interpretation to the Council of Constitutional Inquiry. [239]

3.5. Conclusion

The Ethiopian model or similar model with this is called Other Bodies with the Power of Constitutional/Judicial Review, for example, constitutional adjudication can be done by the National Council, Parliament or specialized parliamentary bodies, etc. The Ethiopian model is experienced as a "Novel" one with which a power of Constitutional Adjudication/Review is vested to the House of Federation or the Upper House. What makes it novel is that not only the power to review constitutionality is given to the legislative, but also the process of reviewing is investigated, recommended or decided by other entity called the Council of Constitutional Inquiry (CCI). The other distinctive feature of this model is also that the CCI's composition and nomination procedure. The members of the CCI are from Judiciary and Legal Professionals. The House by itself is a political body, therewith found combined. The Constitutional/Judicial Review is known as Constitutional Interpretation proceedings processed at the CCI in combination with the HoF in an extraordinary mechanism. The HoF is a final authority with regard to Constitutional Interpretative matters, such as constitutionality of laws, decisions, and customary practices if they are contravene with the FDRE Constitution. The decision of the House shall be binding on matters that have the same nature; this means that it has the effect of precedent according to Article 11 (1) of the Proc. No. 251/2001, as it stated that the final decision of the House on constitutional interpretation shall have general effect which therefore shall have applicability on similar constitutional matters that may arise in the future. Additionally, this indicated that the effects shall be an *erga omne*. On the other hand, Article 12 of similar proclamation stipulated that if part of a given law is decided that it is unconstitutional unless otherwise found necessary, the effect of the final decision shall remain limited to only that very law. This is tantamount to *inter-partes effect.* Article 11 (2) of the same proclamation provided that the House shall publicize the decision in a special publication to be issued for this purpose. Since the date of last interviews was hosted with both the House's Secretariat and CCI's Office officials, the intended publications of the decisions weren't yet practiced.

[239] *Id, Supra note 176*, p. 99

The facts show that, so far, 38 cases are decided by the House that inquired about Constitutional Interpretation. This data was evidenced from the files lodged at the registrars of both the Secretariat of the House and the Office of the CCI. Moreover, data was collected from an interview hosted with *W/ro Tirunesh Geremew*[240] the Team Leader of Constitutional Interpretation *Ato Kifle Tsegaye* junior expert of Constitutional Interpretation under the Directorate[241] and *W/ro Genet Habtamu* file documentation at the HoF.[242] The Appealed files are also reached 289 cases since March 29, 2017 that this interview was approached. Additionally, there are also approximately 30 cases on pending at the House of Federation which needed to be settled. On the way, at the time of interviews hosted, the above interviewees suggested that the registrar wasn't properly working, due to the reason that the worker resigned recently.

Most of the cases the author referred were dead files. The check lists of the decided cases by the House of Federation are attached with the thesis. (Annexed No.2) What was derived from both check lists and the interviews is that there were 38 cases decided, most of the cases were recommended by the CCI and 5 cases were also decided by the CCI, but appealed to the HoF by the respected interested parties, thereby repealed the decision of the CCI. Two cases were referred by the Courts having jurisdiction, then the CCI decided on demerit for which it didn't need a Constitutional Interpretation. Then the cases were appealed to the HoF and the House decided those cases shall worth to Constitutional Interpretation. So, these cases were appealed based on the Proclamation for the Establishment of the Ethiopian Revenues and Customs Authority, and then this proclamation was incompatible with the FDRE Constitution. The HoF also upheld their appeal and repealed the decisions of the CCI in this regard, thereby it held its verdict that the provision of the Proclamation is contradictory with the provision of the FDRE Constitution Article 22(2) and then repealed. So far the House repealed two laws enacted by the Federal legislative body; these are the provision of the Proclamation for the Establishment of the Ethiopian Revenues and Customs Authority and Proclamation No 434/2005, the Revised Proclamation to Provide for Special Procedure and Rules of Evidence on Anti-Corruption, Article 7(1). The decided cases by the House Shall have precedent nature, for example cases of W/ro Kedija Beshir, the deceased's Wife of Ato Wasihun Mekonen and the Successors, (Annexed No. 5) W/ro Mamite Seble Vs Mulu Gurmu (Annexed No.6) to which the cases are based on succession Marital, Personal and Family rights, the right to the Access to Justice and the right to Own Private Property, are repeatedly submitted and decided the same as them. Meanwhile, the Precedent was applied on the same cases through the recommendations and decisions of the CCI and HoF, but they didn't refer as precedent the same procedural reference as in the Federal Supreme Cassation Court's decision. This is due to the reason that the decisions of the House of Federation didn't Publicized yet. (This data was investigated since February, 2016 GC)

[240] An Interview was given by *W/ro Tirunesh Geremew* the Team Leader of Constitutional Interpretation at the HoF, on March 29, 2017
[241] An Interview was given by *Ato Kifle Tsegaye* junior expert of Constitutional Interpretation at the HoF, on March 29, 2017
[242] An Interview was given by *W/ro Genet Habtamu* File Documentation at the HoF, on March 14, 2017

Chapter IV------The Conclusion and Recommendations

4.1. The Conclusion

The conclusion part of this thesis is categorized into two sets. The first part is concerned with comparative perspective of practices of other countries, i.e., in accordance with the Individual's Constitutional Complaints or Amparo Proceedings of either system. The second part of the conclusion focuses on the main rationale of this research paper that is the Individual's Constitutional Complaints system of the contemporary Ethiopian Legal and Practical arrangement. Thus, this part is, briefly and precisely discussed hereafter.

Part One

1. Inferred from Chapter II, the concept of Individual's Constitutional Complaints system is interrelated with the devotion of Constitutional Courts countries. For this specific purpose of analyzing their practices and experiences, here are some selected Countries, such as *the Austria, the Federal Republic of Germany, the Spain, the Italian, and the South African* Individual's Constitutional Complaints mechanism. The rationale for their selectivity depended on their legal tradition i.e. historically and politically, the way they incorporated the fundamental and basic rights on their Constitutions and the procedural processes they followed. This system is based on the ideas of the Prague-born jurist Hans Kelsen and is universally recognized as the prototypes of the centralized system of judicial review, and as a counter model to the United States system of judicial review. The main task of the centralized constitutional court is actually, judicial review; thereby declare the constitutionality or unconstitutionality of the legislation or decision. The above selected Countries of adherences of Constitutional Courts have some resemblances and variations in common in their application of mechanisms of Amparo Proceeding as well as ICC. To start with their similarities, they all are exercising the following criteria in common:

The following are regular conditions to be fulfilled in order to limit the complaints using the system and avoid the overburdening of the Court. These are, a) the previous exhaustion of all available legal remedies; b) the existence of a personal, direct, and current interest in the recourse; c) filing within a statute of limitation; d) the possibility to challenge only self executing statutes; and e) admissibility i.e. The issue has not already been addressed by the Court.

The other similarity is also, "Germany and Spain permit constitutional complaints against any act of public authority, including statutes and court decisions, while Austria grants this remedy only against Acts of Parliament, other statutory provisions and administrative decision." [243] Currently, not only

[243] Gerhard Dannemann, Constitutional Complaints: The European Perspective: Cambridge University Press on behalf of the British Institute of International and Comparative Law, The International and Comparative Law Quarterly, Vol. 43, No. 1 (Jan., 1994),(pp.142-153),p.144
URL: http://www.jstor.org/stable/760826 Accessed: 06-12-2017 14:46 UTC)

these mentioned countries are introduced ICC mechanism against any act of public authority. But also many other central and western European countries are implementing extended Individual's Constitutional Complaints system within their Constitutional Courts review mechanism. This means that, they all allow direct individual complaints against an administrative or authority decision i.e. this does not mean that against any act or omission of the legislature, executive or judiciary violating a person's rights through the application of an illegal general norm.

Some of their differences are also the following.

The main point that these countries shared in variation is that, while incorporating or practicing the centralized Constitutional Courts system, they affected by their traditional, legal and political they adhered for a Constitutional Complaints, for instances, some of these selected countries are practicing of Continental Europe Legal tradition (Civil Law) or adherences of Common Law Legal tradition. Not only the countries affected by the above traditions and legal experiences, but also the states' mechanisms evidenced that they differ on reviewing the Constitutional Complaints to which they approached, that is some of them adjudicated within one centralized Constitutional Court or some of the countries reviewed with different courts as well as in a centralized Constitutional Court that having final jurisdiction.

In connection with their similarities, their variation may be found within their procedure they followed, for instance, Germany permits any constitutional compliant to lodge against any act of legislature, executive or judiciary. "Spain allows the constitutional complaint, or recurso de amparo, against any act of a public authority with the exception of Acts of Parliament." [244] Whereas, Austria did also permit against acts of administrative or acts of the parliament, it didn't allow against decisions of the judiciary.

"The main difference between the German and the Spanish approaches is therefore not the scope of review but the stage at which it takes place."[245] For example, in Germany a constitutional complaint may be lodged against act of parliament directly, but in Spain may not be raised directly to the Constitutional Court. The reasons could be two, the first is the system they followed i.e. the centralized and decentralized mechanism. And the other is the procedure they adhered to. Under Spanish experience the complainant should first convicted criminally in order to raise a question of unconstitutionality of act of the Parliament.

On the other hand, we can found a hybrid of decentralized and centralized systems within the South African; the Constitutional Court has characteristics of a final court of appeal as well as characteristics of a court of constitutional review. A constitutional complaint will direct access 'when it is in the interests of justice and with leave of the Constitutional Court' '(a) to bring a matter directly to the Constitutional Court' or, '(b) to appeal directly to the Constitutional Court from any other court.' The main obstacle that this research examined is that the South African experience showed the affordability

[244] *Id, Supra note 251*, p. 146
[245] *Ibid.*

and accessibility of the constitutional court remained at question. The court looks unfair for those economically poor and remotely live people.

As a result, the author of this thesis can conclude that the Germany's Federal Constitutional Court is preferential to others experiences of selected countries above with regard to Individual's Constitutional Complaints system in general sense. In this sphere, Germany's Individual's Constitutional Complaints mechanism allowed to lodge complainant against any act of public authority, including statutes and court decisions, i.e. to the act of parliament, judiciary and executive. We can found this arrangement not only at the Federal Constitutional Court, but also at the regional level i.e. Länder.

2. The *second* portion of the first part of Countries of the selected ones. Amparo Proceedings, as Allan R. Brewer- Carias simply defined as, "an extra ordinary judicial remedy specifically conceived for the protection of constitutional rights against harms or threats inflicted by authorities or individuals." So, deriving from the above definition, some of the unique characteristics of Amparo Proceedings are the following.the conclusion encompasses, generally, the Amparo Proceedings experiences of Latin American

Most of the Countries of Latin America highly inclined to put into practicing the decentralized and diffused kind of constitutional adjudication mechanism until recently. But, gradually most of the Latin American Countries adhered to apply the Constitutional Courts' kind of arrangements to review or adjudicate the Constitutional matters.

Based on the preceding chapter, it is thoroughly discussed the experiences of Amparo Proceedings of some selective countries. These selective States from Latin America are Mexico, Venezuela and Peru. All of three of them have common and different characteristics. Their similarities lied on:

First, there are five distinct functions: protecting individual guarantees, determining the constitutionality of laws, contesting judicial decisions, petitioning against official administrative acts and resolutions, and protecting social rights. ?

Second, traditionally, amparo affected only inter parties to which it was known as Otero Formula recently they took a reform to fix up the gap by introducing the general declaration of unconstitutionality of an amparo. This means that the later declaration has an ***erga omnes effects***.

Third, there are two ways of challenging the Law under the Latin American Amparo Proceedings procedural processes or interactions. First, the unconstitutionality of the law may be attacked in an adversary proceeding with a state official as the opposing party to the compliant. Second method of challenging a law is "recourse". This method doesn't directly challenge the constitutionality of the law, but rather the complainant requests that the reviewing court determine whether the lower court's decision was based on unconstitutional law.

Fourth, constitutional right for amparo is protected within a mixed system of judicial review. Originally, these countries were adherents of the decentralized judicial review with diffuse system,

even if some countries gradually became integrate to the specialized kind of constitutional court in their legal system.

Fifth, The injuries/harms or threats caused to constitutional rights, must be evident, actual and real, that is, they must affect personally and directly the rights of the plaintiff, in a manifestly arbitrary, illegal and illegitimate way, which the plaintiff must not have consented to.

Sixth, the general rule of admissibility refers to two aspects:- *first,* that the amparo action can only be admissible when there are no other judicial means for granting the constitutional protection; and *second,* that when the legal order provides for these other judicial means for protection of the right, they are inadequate in order to obtain the immediate protection of the harmed or threatened constitutional rights. So that no ex-officio amparo proceeding is admissible.

Seventh, The most distinguishable principles regarding the amparo proceeding is the principle of bilateralism, the need for the existence of a controversy between two or more parties. Not all constitutional rights are individual; some are collective by nature. In these cases the amparo action can also be filed by the group or the association of persons representing their associates, even if they do not have the formal character of an artificial person.

Their difference, also first, lies within the nature of the rights that embedded, accordingly, whether they are enshrined under the Constitution or under Ordinary Laws i.e. laws such as civil laws, procedural laws, statutes, regulations and the like.

Second, Rights that are enforced through constitutional complaint procedure are fundamental rights and freedoms which acquire the status of supremacy by the constitution whereas rights recourse under ordinary law are those rights entertained through ordinary judicial means by ordinary courts.

Third, most of the time, among Latin American States in general manner, there didn't have any extreme differences, particularly, among the selected above three Countries, their difference found within the Institutions to which they opted to follow the system or model of Constitutional Adjudication. That is, these three Countries differed to the mechanism they adhered by. For example, in México, the Constitutionality of laws or decisions are reviewed by specialized constitutional court called *Suprema Corte of Mexico*, in Venezuela what is special for this country is that it has a mixed system of judicial review. In addition to its diffuse proceedings it also established the specialized kind of centralized constitutional adjudication division arrangement within Supreme Court known as *Constitutional Chamber of the Supreme Tribunal of Justice*. And the Peruvian Constitutional Court is called the *Tribunal of Constitutional Guarantees* (TGC). The Peruvian Constitutional Tribunal established as the Constitutional controller, court decides whether a law or its application is constitutional, rather than cases, such as amparo, involving government infringement of individual rights. Moreover, the Tribunal structured out of the judiciary, has the final authority to review such claims after petitioners have exhausted their remedies in all other judicial proceedings.

Thus, the Amparo Proceeding of Latin American Countries today is found not in its historical institutional formation. But, it is restructured as an institutional mechanism means of protection of Constitutional rights through modernized and modified method.

To infer to a conclusion, from the above legal and practices of those selected countries, whether they are followers of the Constitutional Complaints or Amparo Proceedings, the author of this thesis is impressed and inspired by both experiences, particularly, by the mechanism of the Individual's Constitutional Complaints of the continental European that their adjudicating system setup with the abstract and concentrated Specialized Constitutional Courts. This is due to the reasons of that most of the countries adhered to the centralized Constitutional Courts with Continental Europe legal tradition, so to imitate and to transplant those best practices are simple and prompt if necessary. Second, naturally, the Constitutional Courts are organized based on the principles of separation of powers, impartiality and full time authoritative interpreter of the Constitution. Their systems are fixed up to protect the violations infringed by authorities through legislations and decisions if any. The other vey vital function of the Court is that the availability of resolving possibility when the law and politics in the case of a tense situation between laws and politics. Hence, by virtues of the above premises, the Germany's Individual's Constitutional Complaints mechanism is more favored to others, due to its resemblance and easiness characteristics.

Part Two

The modern Ethiopia was experienced four written Constitutions in its entire existence. As far as the author of this thesis studied and researched it couldn't be found a single case had an issue of constitutional interpretation in the Derg's era thereby not yet reviewed. Moreover, the two Imperial Constitutions didn't intend to mention about constitutional interpretation or review concepts as well. Thus, it could be phony to discuss about ICC as a previous local historical ground and earlier source.

The contemporary FDRE Constitution remarkably and repeatedly mentioned and expressed as a "Novel" experience by a number of scholars. Due to the reasons of, not only it incorporated the broadened fundamental human rights and freedoms in its Chapter three, but it also transplanted the unique characteristics which didn't recognized that are new concepts under the Ethiopian previous legal tradition. To mention, some of them are the Ethnic Sovereignty, Constitutional Supremacy, Self-Determination including the Right to Secession, Constitutional Interpretation and so on. What made it extended distinctive feature is the arrangement of Constitutional Interpretation/Adjudication system *legally* and *institutionally*. The very vital and remarkable integration that the FDRE Constitution had enshrined is the access to justice by the "Interested Party" based on the Constitutional Interpretation, this tantamount to the "Individual's Constitutional Complaints" mechanism via four avenues to CCI and HoF. This concept is also extended under the current two Proclamations.

So, the conclusion is derived from two basic view points; the first is from positive aspect, that the House what has intended to be, because as an institution CCI/HoF shall be a vested power derived from the constitution. Most of the vested powers may not contradictory with the powers of

governmental bodies. But what is unique and unusual feature of the Ethiopian current experiences evidenced that the Upper House's power is found merged or mixed with the other governmental body's power, for example with the judiciary. This is evidenced at the CCI's institutional arrangement. This led to raise questions of checks and balances, impartiality, independency, transparency and the like. Even if the Second Chamber is expected to adjudicate constitutional disputes and the authoritative interpreter of the Constitution, it failed to do its inherent power of checks and balances of the laws legislated by the legislature. The other notable problem these institutions faced is the HoF that shall be met twice to see and decide on cases that needed constitutional interpretation to which it is one of the House's powers vested. The author realized that this procedure had its own failures, one is the constitutional case must have to wait up to six months to get adjudication. The other is that this meeting of sessions twice annually seemed to contradictory with other constitutional provision for which it provided that the House shall decide cases of constitutional disputes with thirty days upon receipt. Thus, this shall not be met in practice.

The second positive observation that this research realized is the framers' intention that they gave power to the H^{o}F is emanated From two fears, one is the so called "the Judicial Activism" and the other is "the framers think that the new federal dispensation is the outcome of the 'coming together' of the nationalities." It is, in the words of the framers, 'a political contract' and therefore only the authors that are the nationalities should be the ones to be vested with the power of interpreting the Constitution. This is Ok! But do these fears really existing at this time, first and for most one has to be watch on and then derive its observation. The author, according to the evidences of many scholastic writings and views and on believing of the above arguments, this time the framers' fears is avoided. But their intention remains intact with the viability of the contemporary Constitution. So the Constitutional Adjudication system of the current Ethiopia that the Constitution gave power to the HoF/CCI based on the rationale of or on a mere name of Majority provided/created systematic or operational problems. The Constitution enshrined a vast area of group and individual provisions on its Chapter Three that it covered and estimated almost one third of the whole constitutional articles. To this effect, the constitution focused on establishing institutions to facilitate mainly the group's rights ignoring the Individual's rights. This indifference to the individual's rights legally and institutionally resulted ineffectiveness to the required and intended protection and fulfillment of the fundamental rights and freedoms. Thus, remarkably that this is the time to rearrange and to make it improve specially to the institutions such as the HoF/CCI and the enacted laws to this effect, because these institutions are entrusted to tackle the various violations of human rights that already enshrined by the Constitution itself.

To conclude, the contemporary FDRE's arrangement of adjudicating of Constitutionality is ineffective for two main objectives. Firstly, when it has seen with other countries mentioned above, like the Germany's Constitutional Court experiences, the Ethiopian counterpart has resemblance in connection with their institutionalization. But, the Germany's Constitutional Court seemed effective on giving an answer to the submitted cases on time, because it seats permanently. The Court also looked as if it is

impartial, since in the case of a tense situation between law and politics, the Constitutional court acts as more than a judicial organ or acts as a bridge for compromising. Secondly, the FDRE's Constitutional review system orchestrated mainly to protect the groups (ethnic) rights, legally and institutionally. When we see to the Individual's Constitutional Complaints process of Ethiopia, it is understandable that only the cases are to be seen based on interpretational viewpoints rather than the violation of constitutional rights and freedoms of Individuals. So, the Germany's experience is preferable.

4.2. The Recommendations

Recommendations of the author of this research are commenced from two significant points. First, I suggested that, even if the genesis feature of the contemporary FDRE's Constitutional Review/Adjudication system is highly associated and organized with the political organ of the governmental branch i.e. with the Upper House or HoF or Second Chamber, when it looked from the "Intention of the Framers'" and "Objective" and purpose of the entire Constitution, it was proper to give the power of Constitutional Interpretation to the HoF and CCI. But, where the output or finding is a vital question must be gotten an answer. Generally, the Ethiopian current constitutional interpretation/adjudication/review system has its own unique features and problems. These distinctive characteristics and problems as with my findings are based; they are not emanated from solely its inherent obstacles. Deriving from the Constitution itself, I suggest that some provisions of the Proc. No. 798/2013 and 251/2001requerd to be suitable with the Constitution and this evidenced with some practical realities. Some of these legal and practical realities emanated from incompatibility the constitutional provisions with the Proc. No. 798/2013. For example, a) Article 83 (2) of the FDRE Constitution stated that the HoF within thirty days of receipt, decide a constitutional dispute submitted to it by the Council of Constitutional Inquiry. In practice this didn't happen, because the HoF usually met twice annually and rarely met threes. So, this requirement didn't and couldn't meet. b) Meanwhile, the Proc. No. 798/2013 article 23 (1) stated that the council (CCI) shall hold regular meeting on monthly basis, in fact with certain exception. The meetings created a problematic delay process from inquiry to decision to the cases submitted. C) Proc. No. 798/2013 Articles 7(2), 10(4), 11(4) and 12(3) etc repeatedly expressed that particulars shall be determined by directive to be issued by the Council. But there weren't any directive issued by the Council, not yet. These are also created their own troubles of facilities. For example, the constitutional complaints lodged their cases to the CCI/HoF with "Cassation and Appeal" writing format. d) The other problem the Proclamation demanded is procedural ambiguity with principle of exhaustion. According to article 4(5) of the same proclamation, furnished that upon rejection by the concerned court the case shall submit to the council (CCI) within 90 days from the date he knows such a decision of the court. It lacks clarity as to whether it is upon exhaustion or interruption. At this point, the practices indicated that almost all cases were submitted upon exhaustion i.e. submitted after cassation decision. So, not only the exhaustion principle created a problem to the desperate tolerance with the time when to be decided, but it also gave path to the unbearable long- rooted bureaucratic machineries. Even, the litigants or the interested parties most of

the time considered the ICC/HoF as the other remedial extension of the courts next to the Cassation Court, instead of assuming this is an extra-ordinary remedy. e) The other some problem that this proclamation created is to the accessibility of the ICC/HoF both internally and externally. Internally, there doesn't space to present in personal and deliver their Constitutional infringement issues orally, because the CCI shall hear cases in closed trial. Added to this, some cases indicated that most of the time the interested party is one sided complainant, thus, this denied access to justice to the other party. Moreover, this thesis examined a shortenings or lacks of organized 'Principles of Constitutional Interpretation and standardized rules of procedure with regard to investigation and decision process.

Therefore, taken under considerations of those above inferred suggestions, the CCI/HoF needed rearrangements and with amendments of these two legislations, Proclamations of No. 251/2001Article and No.798/2013 that they needed in consistency with FDRE's Constitutional provisions.

As an option, specifically, the concern of this thesis is with Individual's Constitutional Complaints system enshrined under the FDRE's Constitution and the provisions of the Chapter Three of the same constitution might not meet its anticipated objectives that the Ethiopian people to which they wanted to materialize. This is based on the fears, for instance, as I mentioned above, the contemporary Ethiopian Constitutional Interpretation/Adjudication arrangement didn't properly furnish a respond, due to the Constitution didn't give an inherent power to the HoF/CCI i.e. the Constitutional Interpretation shall to be vested on the Constitutional Court's jurisdiction with which it has an impartiality, independency, transparency and competency body with check and balance. As an alternative, my recommendation is that to share the Constitutional Court's experiences, thereby transplant it and make some amendments of the Constitutional provisions in this concern.

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Appendix: 1. List of interviewees

Interviewees': - Name, Occupation, Position and Address:

- An Interview addressed by Dr Assefa Fisseha (PhD & Assoc. Prof.) Dean of the Centre for Federal Studies, College of Law and Governance, Addis Ababa University, PO Box 62392, Addis Ababa, Ethiopia. Email: assefafish@yahoo.com the interview was taken date on April 19, 2017 GC

- An Interview addressed by Ato Weldu Merene, former Director of Directorate the research and study on the Constitutional Interpretation and Identity Affair at the House of Federation (HoF) and currently Legal Advisor of the Speaker of the HoF , interview was taken on May 19, 2017GC

- An Interview addressed by Ato Desalegn Weyissa, Head of the Office of the Council of Constitutional Inquiry, Interview was taken on March 17, 2017GC

- An Interview held with Ato Muluye Welelaw Alemu Director of the directorate of the research and study on the Constitutional Interpretation and Identity Affair, interview was taken on March 14, 2017GC

- An Interview addressed by Ato Kebebe Tadesse Kebede Director of Directorate of the Study and Research Affair at the Council of Constitutional Inquiry (CCI), interview was taken on March 17, 2017GC

- An Interview addressed by W/ro Gebeyanesh Abebe, the Registrar of the Council of Constitutional Inquiry (CCI), and interview was taken on March 17, 2017GC

- An Interview was given by *W/ro Tirunesh Geremew* the Team Leader of Constitutional Interpretation at the HoF, on March 29, 2017GC

- An Interview was given by *Ato Kifle Tsegaye* junior expert of Constitutional Interpretation at the HoF, on March 29, 2017GC

- An Interview was given by *W/ro Genet Habtamu* File Documentation at the HoF, on March 14, 2017GC

Appendix: 2. Interview Guide

- **Key Informant Interview Questions with Concerned Scholars, Experts, Lawyers and Ordinary peoples about Individuals' Constitutional Complaints with regard to the Ethiopian current mechanisms (experiences). I really appreciate your cooperation and generosity. The information you are asked to provide is required for research purposes only, it will not be jeopardized.**

Questions for Scholars, Experts:

Q1. What are the basic similarities and differences between the adherents of Constitutional Courts and the Supreme Courts judicial review systems with the Ethiopian Constitutional Adjudication system in challenging the violations of fundamental rights and freedoms?

Q2. Do you think that, Does it the FDRE Constitution furnish sufficient ways of access to justice to those individual complaints to avert human rights infringements by authorities in comparison with the Latin American experiences in protection of human rights through the mechanism of Amparo Proceedings?

Q3. What will be your scholastic professional opinion on vesting a power of constitutional adjudication to a Legislative or a political body instead of giving to the judiciary that it has an inherent power of constitutional/judicial review power in almost all countries of the world? What will be the consequences?

Q4. Are you thinking of it is proper to give such power to the legislature based on the rationale intrinsic (attached) on the constitution at the time of drafting by the "framers intention" or does it rational to exclude the Courts role in constitutional interpretation matters in light of a mere reason of framers intention or does this exclusion was done by the framers?

Interview Questions for public servants other than Lawyers:

Q1. Do you have any Knowledge or familiarity about Individual's Constitutional Complaints?

Q2. What do understand about HoF/CCI in doing the constitutional interpretation?

Q3. What is your responds when approaching of those complainants trying to lodge their complaints on those institutions that you worked for i.e. the HoF/CCI? Are you attempted to help to those individuals?

Q4. Do you believe that most of the complainants were satisfied about all in all process and outcome of either institution i.e. the HoF/CCI?

Q5. Throughout your work experience, what is the reaction you sought when a complainant got unexpected decision of the i.e. the HoF/CCI?